

**[H.A.S.C. No. 113-61]**

**THE INTERPRETATION OF H.R. 3210:  
PAY OUR MILITARY ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON READINESS

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

HEARING HELD  
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## THE INTERPRETATION OF H.R. 3210: PAY OUR MILITARY ACT

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
SUBCOMMITTEE ON READINESS,

*Washington, DC, Thursday, October 10, 2013.*

The subcommittee met, pursuant to call, at 11:32 a.m., in room 2118, Rayburn House Office Building, Hon. Robert J. Wittman (chairman of the subcommittee) presiding.

### **OPENING STATEMENT OF HON. ROBERT J. WITTMAN, A REPRESENTATIVE FROM VIRGINIA, CHAIRMAN, SUBCOMMITTEE ON READINESS**

Mr. WITTMAN. I would like to call to order the House Armed Services Committee Subcommittee on Readiness. I want to welcome everyone to today's hearing that is focused on the implementation of the Pay Our Military Act.

While the Department of Defense has ordered a significant number of people back to work this week, many remain furloughed and it is important for this committee to understand the short- and long-term implications for our Nation's readiness and, most importantly, current operations in Afghanistan.

I would like to welcome our distinguished panel today: the Honorable Robert Hale, Under Secretary of Defense (Comptroller); the Honorable Jessica Wright, Acting Under Secretary for Personnel and Readiness; and Mr. Robert Taylor, Acting General Counsel. This hearing is focused on the Department's implementation guidance on the Pay Our Military Act which Secretary Hagel issued over the weekend and the questions regarding how decisions were made, who made them and why.

While many Department of Defense [DOD] civilians and contractor personnel are back at work, others, like a number of my constituents in the First District, are at home struggling to pay their bills, manage their households and feed their families.

These dedicated folks are worried and anxious about the very uncertain future they face, asking hard questions about how the decision was made to recall roughly 90 percent of the workforce, but not them.

Secretary Hale, please, when you have a chance, shed light on this decisionmaking process.

If you read the press reports, the initial DOD position was to recall all personnel to duty, which would have been consistent with congressional intent. The legislation states, and I quote, that, "The Secretary concerned determines who provides support to members of the Armed Forces."

This language, in my view, is clear on its face and gave Secretary Hagel the authority he needed to recall the entire workforce. While common sense doesn't always apply here in Washington, it seems to me that every person who works in the Department of Defense supports members of the armed services.

Even if, however, you don't share my view and there is room for disagreement on this point, the language provides broad latitude to interpret it in a manner that ensures minimal disruption of the Department's mission, and, most importantly, continuity of operations at a time when our military members are engaged in operations on the battlefields of Afghanistan. Our All-Volunteer Force is still at war and their families are experiencing the harsh consequences of this decision each and every day.

As we discuss how, according to press reports, lawyers at the Department of Justice interpreted the Pay Our Military Act, our soldiers, sailors, airmen and Marines are out on patrols, training Afghan soldiers and accomplishing the high-risk missions we have asked them to do.

This is why every year for over 50 years the Armed Services Committee has worked in a bipartisan manner to get the authorization bill done. Our troops and our national security depend on it. This year is no different.

Three months ago, the House passed the Fiscal Year 2014 National Defense Authorization Act with the overwhelming support of Members from both parties and, yet we continue to wait for the Senate to take action on it. Two months ago, the House passed the Fiscal Year 2014 Defense Appropriations bill with overwhelming bipartisan support and 315 Members voting in favor. Unfortunately, that piece of legislation also has yet to be taken up by the Senate.

If the Senate chose to go back to work to regular order and actually vote on bills and go to conference with the House to resolve differences in the legislation, as we used to do at one time, ironically enough we wouldn't be at this hearing and Active Duty, Reservists, Guard, civilians and contractors wouldn't be suffering from these self-inflicted stresses.

However, no one is suffering more than the families who lost loved ones recently in Afghanistan during this unnecessary and preventable government shutdown. I was shocked and angered when I learned that five of our Nation's heroes died in Afghanistan over the weekend and their families were informed that benefits could not be paid.

These benefits, which fall in the category of military member pay and allowances authorized by the legislation, provide a small amount of financial support as families grieve so that during the most harrowing of times they can focus on what matters most.

They allow families to travel to Dover Air Force Base to receive their fallen loved ones. They also ensure we bury our heroes, those who have paid the ultimate price, in a dignified manner that recognizes their extraordinary service and sacrifice.

And while I applaud the organizations who have stepped in to fill this senseless void created by government lawyers narrowly interpreting the law, it is Secretary Hagel's responsibility to make the hard policy judgment and to do the right thing. That is to find a

way to treat our families with the respect and dignity they have earned.

Every leader in the military, from the squad leader to the combatant commander, is charged with the task of taking care of their people. It is an absolute embarrassment to this government and to this Nation that we are failing in our duties to those who take care of us and protect us every day. Our soldiers, sailors, airmen, Marines and their families deserve better, and we owe them answers.

Before we proceed, I would like to highlight that while the Readiness Subcommittee is hosting this hearing, we have invited the full committee to participate. And if there are any other members of the full committee leadership that would like to comment later, we will allow them so to do.

And with that, I will now go to our ranking member, my good friend Madeleine Bordallo. Madeleine.

[The prepared statement of Mr. Wittman can be found in the Appendix on page 41.]

**STATEMENT OF HON. MADELEINE Z. BORDALLO, A DELEGATE FROM GUAM, RANKING MEMBER, SUBCOMMITTEE ON READINESS**

Ms. BORDALLO. Thank you very much, Mr. Chairman. And I want to thank you for calling this hearing. I would like to also welcome Secretary Hale, Secretary Wright and Mr. Taylor for testifying before us today.

While we are discussing the important issues of how the Department of Defense implements H.R. 3210, I find that this is a futile effort. We should never, never have had to worry about this situation. If we could just vote on a clean continuing resolution [CR].

If we pass a clean CR, then appoint conferees to meet on a budget resolution, that would be a step in the right direction for fixing many of the challenges that face the Department of Defense today and other agencies and departments.

I appreciate the Department of Defense has fully implemented H.R. 3210, and most workers are back to work at the Department. In a time where we remain a country at war, it is important that we continue to support our men and women in uniform even during a preventable government shutdown.

However, we cannot continue to cherry-pick departments and agencies that we want to keep open. That is not the way to operate. Let's solve the problem by passing a clean CR and moving into a conference committee on the budget resolution so that we can end this sequestration.

And I would also like to add that we cannot continue to hold the debt ceiling hostage to unrelated matters. We are rapidly approaching the date in which the Treasury Department will exhaust its ability to use extraordinary measures to keep paying America's bills.

If we don't increase the debt ceiling, the impact on our military will be unprecedented. It is unlikely whether payments could be prioritized, and I am concerned that our service members won't be paid. Contracts won't be paid. We will truly hollow out our government, and that is just plain dangerous.

Ladies and gentlemen, we have the votes to pass a clean CR. We have to muster the political will to pass a clean CR and clean debt ceiling increase. So I again thank you, Mr. Chairman, and I look forward to our witnesses' testimony and our question and our answer period. Thank you, and I yield back.

Mr. WITTMAN. Very good. Thank you, Madeleine. I would like to at this time yield 3 minutes of my time to the sponsor of the Pay Our Military Act, Representative Mike Coffman from the great State of Colorado. Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman. I appreciate the time you have given me today to tell the American people and those gathered here today about H.R. 3210, the Pay Our Military Act, which I introduced in response to a possible shutdown of the Federal Government.

I will discuss the intent of the bill, as well as the harmful impact of the Department of Defense failure to follow the spirit of the law. During the last few weeks of September, Congress was consumed with the impending shutdown of the Federal Government.

Failure to reach an agreement on the issues would have a severe negative impact on the millions of Americans who either serve in the Armed Forces or whose work supports the military. This was something we needed to avoid at all cost. Less than 3 days before the shutdown of the Federal Government, I introduced H.R. 3210, the Pay Our Military Act. Specifically, the bill provides funds for the Department of Defense to pay members of the armed services, including Reserve Components who perform active service, as well as the civilian employees and contractors who support the military.

My bill passed the House of Representatives by a unanimous vote of 423 to zero. On the day before the shutdown, the Senate passed this bill by unanimous consent. Hours later, the bill was signed into law by President Obama.

The broad bipartisan consensus behind this bill exemplifies the deep respect the American people have for our military. Unfortunately, the Department of Defense took it upon itself to disregard the will of the American people and violate a law that had unanimous support of Congress and the signature of the Commander in Chief.

Just hours after my bill was signed into law, Robert Hale, the Pentagon's Comptroller, sent all Department of Defense civilian employees a letter stating, "Non-excepted civilians will begin a process of orderly shutdown. That will include acknowledging receipt of a furlough letter."

I believe the guidance issued by Comptroller Hale was based on a deliberate decision by the Department of Defense to misinterpret the Pay Our Military Act for political purposes. H.R. 3210 makes absolutely no mention of excepted or non-excepted personnel.

My bill casts a wide net, a wide a net as possible to ensure that the Department's civilian personnel, all of whom were necessary to support military operations, can report to work. On day one of the government shutdown, the Pentagon furloughed the vast majority of its civilian workforce in violation of the law.

I would again like to thank my good friend from Virginia for yielding me the additional time from his own personal time to discuss this very important matter. With that, I yield back.

Mr. WITTMAN. Thank you, Mr. Coffman. And now we go to Secretary Hale. I think you are going to make an opening statement for the panel. Is that correct?

Secretary HALE. I am. Thank you.

Mr. WITTMAN. Okay. Thank you, Mr. Secretary. You are recognized.

**STATEMENT OF HON. ROBERT F. HALE, UNDER SECRETARY OF DEFENSE (COMPTROLLER), U.S. DEPARTMENT OF DEFENSE; ROBERT S. TAYLOR, ACTING GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE, U.S. DEPARTMENT OF DEFENSE; AND HON. JESSICA L. (GARFOLA) WRIGHT, ACTING UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, U.S. DEPARTMENT OF DEFENSE**

**STATEMENT OF HON. ROBERT F. HALE**

Secretary HALE. Well, thank you, Mr. Chairman, ranking member and members of the committee. Let me start by saying that we all wish this lapse of appropriations hadn't happened. It is a tragedy. And DOD strongly urges the Congress to pass either an appropriation or a continuing resolution that the President can sign that ends the lapse for all Federal agencies.

But we are where we are. The lapse is in effect. So my goal today is to explain how DOD is implementing the lapse of appropriation with a focus on the Pay Our Military Act [POMA] and the associated partial shutdown. And I will give you some idea also of impacts of that shutdown.

Throughout my briefing, I will focus only on the Department of Defense, but I want to note that the lapse of appropriations is having far-reaching effects in most agencies of government, not just in DOD. Indeed, because of the legislation that you enacted, the effects in other agencies are sometimes significantly more severe.

So let me start with the initial implementation of the lapse of appropriations. On September 25, 2013, as the date for lapse approached, the deputy secretary issued guidance for implementing a lapse of appropriations. The guidance provided information to the services and agencies for identifying excepted activities. And you will hear my word. I am going to use that word repeatedly, and all of us, throughout this discussion.

Excepted activities under the law are those related to military operations and to safety of life and protection of property. Once the lapse occurred, we have no authority prior to POMA to do anything other than follow this guidance. We provided examples to the services to help in implementation.

So what were the initial results of this implementation, again, before the POMA legislation when the lapse occurred on October 1? All Active Duty military personnel continued in their normal status because of the nature of their employment. They are paid unless they are separated from the services, and so we directed them to continue in normal duty status.

Commanders and managers identified civilians who worked primarily on excepted activities. Again, activities related to military operations and to safety of life and property are the only things that qualify. And these so-called excepted civilians continued work-

ing after the lapse. All others were placed on emergency no-notice furloughs.

Reserves on inactive duty were allowed to drill their weekend drills only if the drills were in support of excepted activities, primarily preparing for deployment to Afghanistan. All other drills were canceled.

So what was the effect of the lapse prior to POMA? About 400,000 DOD civilians were placed on unpaid furloughs. They will be paid for furlough days only if Congress passes separate legislation, which the House has done.

Military personnel and excepted civilians continue to work, and they are guaranteed to be paid eventually, but prior to POMA that payment would have only occurred after the end of the lapse. And Reserves allowed to conduct inactive duty for training, those few that are working on excepted activities, they are guaranteed eventual payment, but that can't be paid until after the lapse ends.

So that was the status before the POMA legislation. The Pay Our Military Act was enacted on September 30 and it greatly changed the picture in DOD. First, for military personnel, it provided an appropriation—it is an appropriations act—for pay and allowances for those on active service.

DOD can now pay Active Duty military personnel on time and in full, even if—and I hope this doesn't happen—the lapse continues beyond the October 15th pay date. And we have indeed already run that payroll, so it will be on time and in full.

POMA also enacted an appropriation for pay and allowances of civilians who provide support to members of the Armed Forces, which permitted us to recall many civilians from furloughs. There were a number of steps that DOD had to take to implement POMA for civilians. Throughout the process, DOD worked closely with the Department of Justice on implementation.

We concluded that POMA did not provide legal authority for a blanket recall of all DOD civilians. And I know that differs from what you have just heard, so let me explain why.

First, had the Congress intended, or had the law been intended, to provide recall for all, it should have said, "Recall all civilians." It did not. And perhaps more problematic, it required that the Secretary of Defense make a determination of who would be recalled, which our lawyers concluded clearly implied that a blanket recall was not supported.

Instead, DOD was required to conduct a review to identify those civilians who most directly serve members of the Armed Forces. That review focused on the degree to which civilians aided the morale, well-being, capabilities and readiness of members of the Armed Forces.

Based on this review, DOD identified several categories of civilian personnel. First, there were the excepted civilian personnel, the ones who are directly supporting military operations and safety of life and property.

They had continued to work, even during the lapse of appropriations. They are now covered under POMA.

Civilians providing ongoing support to members of the Armed Forces, they were recalled from furlough. It includes day-to-day

support, like health care providers, family support, some repair and maintenance, commissary workers, payroll activities.

Then there was another category of civilians providing support that affected military members in the longer run, and they also were recalled from furlough on the grounds that their not working during the lapse period would have longer-term effects; that include acquisition oversight, financial management, logistics, and a number of others.

Finally, a category of civilians was identified whose work is highly valuable and necessary. I want to underscore that point. But it provides less direct support to military members. These civilians were not covered by POMA, and some remain on furlough.

These included things like CIO [Chief Information Officer] staff functions, public affairs, to the extent they are not performing internal communications, leg [legislative] affairs, deputy chief management officer, auditors, and related functions, and personnel providing support to non-DOD personnel, which we felt were not covered by the law. On Saturday, October 5th, Secretary Hagel, based on this review, issued a determination regarding civilians in POMA. And then we began to implement that determination as quickly as we could.

More than 95 percent of our civilians who were on furlough were recalled. It is actually more like 98 percent. But the number is going to vary, so I prefer the more-than-95. And most were back to work by Monday, October 7th.

Looked at another way, who isn't covered by POMA? About—or slightly more than 40,000 DOD employees were not covered by POMA under this law.

About 35,000 of those are DOD employees in the Army Corps of Engineers. Most of them are working today because they are funded with prior-year appropriations, and under the law, they can continue to work.

Excuse me. But those prior-year funds will soon run out. And because these DOD employees in the Corps of Engineers are not covered by POMA, some of those individuals would begin to be furloughed if this lapse continues.

And another roughly 7,000 DOD employees remain on furlough. These are the CIO, public affairs, leg affairs, auditors, and related functions.

Let me say one more thing about POMA and our civilians, and that is these civilians not on—POMA will allow the civilians not on furlough to be paid on time and in full during non-furlough periods.

So we will be able to—the pay date is Friday for non-furlough periods, will be on time and in full. And future paydays, if the lapse continues—and again, I very much hope it won't—will be on time and in full for those who don't remain on furlough.

I want to emphasize that DOD followed the law and the guidance in implementing POMA. And we consulted closely with our lawyers and with the lawyers in the Department of Justice.

However, this process of categorizing civilians was difficult, it was time-consuming, and it was hurtful to those who remain on furlough. And let me emphasize again that being selected to remain on furlough has nothing to do with the value of an individual's work to national security or the DOD, and everything to do

with the way the POMA legislation was written, as interpreted by DOD, based on advice from the Department of Justice.

Now, POMA not only permitted DOD to provide pay and allowances to military members, and to recall many of our civilians from furloughs, it also permitted the Department to provide “pay and allowances,” and that was its word, to contractors who support members of the Armed Forces.

This provision of POMA was especially difficult to interpret, because almost all contracts are designed to buy goods or services. And almost all of them contain more than pay and allowances. They contain profit, overhead, materiel and supplies.

So we are having to try to separate these out in a manner that is extremely difficult to do. We are still working on a determination of how to apply POMA to contracts using fiscal year 2014 funds.

So over the past 14—past 10 days, we experienced a lapse of appropriations, and we implemented POMA. Where does all this leave the Department today? We, of course, still under a lapse of appropriations and partially shut down.

POMA has substantially reduced the adverse effects. They would be much worse if we didn’t have that legislation. We could pay our military on time and in full because of POMA. Most of our civilian workers are back at work, and can be paid on time and in full, except those on furlough, also because of POMA.

We have the personnel we now need to process vouchers, which we didn’t have prior to POMA. So for contracts with prior-year money, and that is most of them these days, we are going to be able to start paying our vendors as well.

However, while POMA mitigated adverse effects, the lapse of appropriations is still having serious adverse effects on the Department of Defense. And let me just list some of them for you so you get a sense of what is happening.

Despite our very best efforts, there are already some limited adverse effects on the war in Afghanistan, and a great concern. Afghan, and other military operations, are clearly excepted activities under the law, which means we can generally obligate funds and carry out activities. But sometimes we cannot.

Notably, we can no longer have authority to make CERP payments, the Commander Emergency Response Program. It is cash, so it represents an outlay.

We have no authority to do that under the law until we get beyond this lapse. This is a unique authority that expired after the appropriation bill lapsed.

These payments are made to Afghans as compensation for deaths or damage, or for other events. And they are key to continuing a responsible drawdown in Afghanistan.

General Dunford has expressed strong concern, but we have not yet identified a legal way to make these payments during a lapse of appropriations. We are trying our best.

The lapse is harming the training and readiness of Reserves not on active duty. Weekend drills have been halted, unless in support of an excepted activity, such as preparing for deployment to Afghanistan. The Guard has canceled around 100,000 drills in the first weekend; the Reserves, around 75,000. And even for those who drill, we can’t pay them until the lapse ends.

The lapse is also reducing the training and readiness of Active Duty personnel. Services have curtailed training in later-deploying units. They are focusing on being sure that units near deploying are ready.

I can't give you specifics right now, because of POMA, they are reviewing their plans. But there will likely be some continued curtailment of training for later-deploying units.

The lapse has forced us to waste a good deal of the public's money. About 400,000 DOD civilian personnel on furlough did not work for 4 days. That is roughly \$600 million in services that we lost in support of national security objectives.

And many other actions are forcing us to waste resources. We had to close training schools and require people to travel home. Once POMA was implemented, they had to—they could return. We had to pay for that, too.

We had to cancel training events, even though we had already incurred many of the costs. We will suffer interest penalty payments, because we are being forced to pay bills late.

The lapse has further harmed the morale of our civilian workforce, and a great deal of concern, a great deal of concern to me. Recall from furlough certainly helped most of our civilians. Retroactive pay, if it is enacted, will help.

But in recent years, we have been regularly taking actions that undermine civilian morale; pay freezes, the sequester furloughs—lest we forget, it was only a couple months ago that we furloughed most of our civilians, or many of them, for 6 days—and now the shutdown furloughs.

In the first days of the lapse, commanders repeatedly told me that civilian workers were frustrated and angry. And I can't imagine they would be any other way.

And many say they will retire or seek other jobs. And low morale means low productivity at most DOD support activities.

And another problem, during the lapse, DOD has no legal authority to pay death gratuities. We have been through this with the Justice Department, with the OMB General Counsel, with our own general counsel. It is in another section of the law, separate from pay and allowances.

We just don't have the legal authority, and I don't think you want us to start going around the law. So that \$100,000 in death gratuity payments is usually made shortly after an active duty death. As of yesterday, 29 military members had died on active duty since October 1st.

A little more than a day ago, the Fisher House Foundation offered to pay these benefits to our fallen during lapse of appropriations. And DOD, in return, or in turn, offered to enter into a contract with the Fisher House to reimburse the foundation after the lapse ends. We can enter into the contract, because we view it as an excepted activity. We can't disperse any money, because it is not a pay and allowance. And I think that is just very clear.

So that is the arrangement we have reached with the Fisher House. They will begin making payments soon, and we will reimburse them as soon as the lapse ends.

Also, yesterday, the House passed legislation that would provide us authority to make these and other payments. And so in some fashion, we will do what we need to do.

And I couldn't agree with the committee more, and the chairman, and all of you more. We will ensure that survivors of our fallen will receive these benefits.

Let me finish by looking just a bit ahead, because I don't want to look too far ahead. I want this to end, and I hope we all do.

POMA gave us the ability to provide pay and allowances to the military and most civilians. And most of our military and civilians are back at work.

But we don't have the legal authority to enter into contracts for supplies, for fuel, for materiel, using fiscal 2014 funds, unless those contracts are in direct support of an excepted activity; again, a military operation, safety, life and property. We are watching closely to see how this absence of authority affects future operations if the lapse continues.

Moreover, even if we can enter into contracts for excepted activities, we can't pay the vendors using fiscal 2014 funds. Again, we have no legal authority to do that. And we are not sure how long our vendors are going to accept IOUs.

So even with POMA, my bottom line, even with POMA, DOD is experiencing disruption in its mission due to a lapse of appropriations. And I note again that many other Federal agencies are experiencing even greater disruption.

The lapse is also consuming large amounts of time at all levels of the Department. I think it can be fairly called a colossal waste of time.

We very much hope Congress will act very soon to end the lapse of appropriations for DOD and for all Federal agencies. Mr. Chairman, that completes my prepared remarks, or my oral remarks, and I would be glad, joined by my colleagues, to try to answer your questions.

[Editor's Note: The witnesses did not provide written statements of the proposed testimony in advance of the hearing. The Chairman, in concurrence with the Ranking Minority Member, agreed to waive Committee Rule 13 for this hearing.]

Mr. WITTMAN. Thank you, Mr. Secretary. We appreciate your perspective on things and we look forward to posing some questions to you and other members of the panel.

I want to begin by going to a letter that was written by myself and my colleague, Mr. Connolly from Virginia, on October the 7th to Secretary Hagel. And, essentially, we asked Secretary Hagel about the status of contractors.

As you know, contractors do a tremendously valuable job in making sure that our men and women in uniform have what they need, and they are a critical part of this element providing for this Nation's defenses.

I wanted to get from you—can you explain the criteria that you have to determine which contracts get paid, which ones do not? How do we maintain certainty for those folks that are out there providing these services?

As you know, there are many small contractors that cannot sustain long-term times without being paid. How are we making sure

that that segment of the workforce is taken care of? They are critical.

And how are we going to make sure we stay in touch with them about what is happening, when they will get paid, when they will be brought back in as far as doing that work?

Can you provide some definition to us about how those decisions are made and the criteria to determine what does and what does not get paid as far as contracts?

Secretary HALE. I can try to help. Let me say, overall our goal here is to obey the law, which I know you want us to do and we obviously must do. But to minimize the adverse affects on our mission wherever we can so long as we are obeying the law.

So, what the law says is that for contractors who are working now based on contracts funded with money in fiscal year 2013 or before, they can go ahead and work as long as supervision is available and now that most of our civilians and military are back, it will be.

So, they can go ahead and work. And we are allowed to pay them. We stopped paying them because prior to the implementation of POMA we didn't have available to us the people we needed to process acceptance of the goods and services and their vouchers.

Those people are back and for contracts with money funded fiscal 2013 and before, I think payments will get started fairly quickly.

Fiscal 2014 is a very different story. There, we only have the authority to enter into contracts for excepted activities and we will do that where we can. And even there we have no authority, and I am going to leave POMA aside for a moment, to pay those contracts; and for nonexcepted activities, we can't enter into contracts.

Now, POMA said we could pay the pay and allowances of contractors serving members of the Armed Forces. So, for those who work and enter into a contract excepted activities, if the vendor has an approved cost-accounting system and they can separate out pays and allowances, we will make every effort to pay it.

But I think it may be limited in their ability to do it and it will be very difficult to carry out. I think there will be hardly any contracts in the nonexcepted area that contractors are going to be willing to engage in a contract with us only for pay and allowances.

They can't have any profit. They can't have any overhead in those contracts. I think that will be very limited. I know that is confusing. It is confusing to us, too, but we are working hard to sort it out.

The big thing you need to know is most of our contracts today are funded with 2013 and before money and we are going to get that money flowing again to our contractors soon, as soon as we have time to do the acceptance testing and process the vouchers.

Mr. WITTMAN. Secretary Hale, you talked about the 40,000 or so people that have not returned. Can you give us some perspective on the civilians that haven't returned, the contractors that will not be paid and how it relates to unit readiness?

As you know, many of our units rely upon those DOD civilians and contractors to make sure they maintain that readiness, especially what is happening now with elements of activities in Afghanistan.

Also, both the retrograde from Afghanistan, the equipment that is coming back or the equipment that needs to be repaired. Can you give us an assessment about what the impact will be on unit readiness?

Secretary HALE. Well, not with much precision at this point. Most of our civilians are back, more than 95 percent and so I think that the majority of that work is going to get done including the reset operations. Almost all of our depot workers never left because they are funded with working capital funds. Those under the law can accumulate cash and they did based on prior year fiscal 2013 and before appropriations. So, those workers could continue until that cash runs out.

And we are probably at least a week or two from that and longer for many of our depots. So I think that they will continue. I don't see any immediate adverse effects on readiness in Afghanistan. I mentioned the CERP payments which are of great concern, but other than that.

If this goes on, there may be some additional ones that would occur. There are excepted activities so we can enter into contracts. The question is whether vendors are going to be willing to supply the goods and services if we can't give—guarantee to pay them.

But, at the moment, I actually was in contact with General Dunford over the weekend and leaving aside the problems in CERP, he didn't see any issues at the moment. They are going to get worse.

I feel kind of like a wind-up doll. You know, I mean we are wound up right now and we are kind of going like this. We are going to start to—

Mr. WITTMAN. Yes.

Secretary HALE [continuing]. Bend over as we can no longer buy supplies and fuel for nonexcepted activities or because vendors won't provide the goods and services. So, please, we need to end this lapse.

Mr. WITTMAN. Got you. Very good. Thank you, Secretary Hale. I am now going to go to our ranking member, Madeline Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman.

My first question is for Mr. Taylor. You are with the General Counsel's Office, correct?

Mr. TAYLOR. That is correct.

Ms. BORDALLO. Did the drafting of H.R. 3210 impact how the Department interpreted and implemented the bill and, in other words, what challenges did the manner in which H.R. 3210 was drafted present to the Department in clearly understanding congressional intent?

Mr. TAYLOR. Well, we are obligated to interpret the language as it is presented to us as we receive it from the Congress and there are clearly several issues with respect to how it was drafted that has caused us to interpret it in the way we have which may differ from the views of the author of the legislation and the views of others.

For example, Section 2(a)(1) is the provision that authorizes us to pay all the members of the Armed Forces who perform active service. It is a blanket provision.

It clearly applies to all who are in active service and it doesn't call for any choosing and any exercise of discretion of who is in and who is out. Everybody is in.

So, thank you very much for that. That was very, very helpful and allows us to pay our military members on time and in full. [Section] 2(a)(2) is drafted a little bit differently. It calls—in contrast to (1), it isn't a blanket recall.

It calls for exercising of discretion based on what appears to be a criterion in the language which is "are providing support to members of the Armed Forces described in paragraph (1); that is members of the Armed Forces who perform active service.

So, the challenge was to try to figure out what that means. It clearly calls for the exercise of discretion. What is to guide the exercise of discretion?

Is it unbounded and complete absolute discretion in the Secretary? We don't think so. We think the exercise of discretion has to aim at determining who is providing support to members of the Armed Forces.

A simple example, people who are doing wonderful and important work, the civil works element of the Army Corps of Engineers. The work they do is very valuable to the Nation.

But, in general, it is providing support. It is providing services to individuals, to communities outside the Department of Defense. It is hard to see how all of those employees are providing support to members of the Armed Forces.

The work is important. It serves the Nation to do that work. I wish we could recall them. I wish we could put them fully back to work, but it appears, from the language, to be outside the scope.

Ms. BORDALLO. Thank you, very much. You have answered my question. I am sure there were other issues as well. Am I correct?

All right. Secretary Wright, I have a question for you. I am concerned that the Department of Defense is increasingly using military personnel to do the work of the civilian because of caps and constraints and furloughs and sequestrations and shutdowns.

So, I have a concern about this approach from a readiness and cost perspective as well as these actions seem inconsistent with guidance from the Department.

As we know, some nonessential employees are furloughed because they are performing functions that aren't considered essential. However, is DOD circumventing the law by using military personnel for functions outside their core military operational specialties?

Could you comment on this?

Mrs. WRIGHT. Yes, ma'am. Thank you for the question. Frankly, we support the fact that we don't use, what is the term, borrowed military manpower.

I do know that the services based upon the predicament that we are in without a budget have grave concern that some of these activities that they are responsible for should continue and sometimes the training of these personnel are not happening.

And so we have, at times, we could potentially have an idle soldier or military member. The services are not yet using borrowed military manpower to my knowledge. They must come in and ask

to do this, to OSD [Office of the Secretary of Defense] Personnel and Readiness.

I know that they are talking about it at this point, ma'am. But, right now, they are not, to my knowledge, they are not doing it.

Ms. BORDALLO. All right. So, your answer to that question is you are not using military personnel?

Mrs. WRIGHT. To my knowledge, ma'am—

Ms. BORDALLO. Yes.

Mrs. WRIGHT [continuing]. They are not using it.

Ms. BORDALLO. Thank you. And my next question—

Secretary HALE. May I issue a plea? Please don't use the word nonessential as regards our civilians.

The folks that are still on furlough are essential. We can't operate without them in the longer term.

Ms. BORDALLO. Well, my question—

Secretary HALE. It is very harmful to morale. Call them non-exempt or nonexempted, but please don't use that phrase—

Ms. BORDALLO. I—

Secretary HALE. It comes from the 1995 one and it cost—I can't tell you how long—it was Air Force FM [financial management] in 1995—it was years after that, I had people saying, "Well, I wasn't essential." So, I—

Ms. BORDALLO. I totally agree with you, Mr. Hale; I think it is the wrong word to use. And certainly they wouldn't be on the job if they weren't essential to begin with.

My last question, Mr. Chairman, is, and this is for any witness, as you know, there was a concern and confusion about the treatment of members of the National Guard when the government shutdown began last week.

National Guardsmen on title 10 orders and in direct support of the Federal mission were spared any potential furloughs. However, there was initial confusion about whether soldiers and airmen on title 32 orders were covered.

In particular, dual status technicians were not initially included as essential. I raise this point because I am concerned there is a lack of appreciation and understanding of the importance of title 32 to the National Guard's role in homeland defense.

Although the Governor retains control over the National Guard in that status, they can be put on those orders to support national contingencies.

If Tropical Storm Karen had been more powerful, it would have been customary for the National Guard to be put on title 32 orders to support storm recovery. But under the initial guidance, I am not sure it would have been possible.

So, can the Department more clearly articulate the thinking on this particular point?

Mrs. WRIGHT. Ma'am, if I can take that question, please.

Ms. BORDALLO. Yes, surely.

Mrs. WRIGHT. First, a little bit about my history; I was a guardsman for 35 years. So, I—

Ms. BORDALLO. Oh, well thank you. You are certainly experienced then to answer.

Mrs. WRIGHT. So I truly understand the viability of the Guard and Reserve and the need for them. The title 32 active Guard Re-

serve soldiers were considered the same as a title 10 Active Component soldier and they were not furloughed, if you will.

They were paid for; they were kept on duty. The dual status technician is really a government employee—a civilian government employee, and the term dual status means they must hold a position within the National Guard and drill as a guardsperson but they also remain in—they get paid as a GS—General Schedule or wage grade, Monday through Friday.

And so, they are considered a civilian DOD employee. So, once the act was passed—well first, before the act was passed, they were in the same category as all the other civilian employees, and if they were in the excepted or exempt category, they were kept on duty.

Once the act was passed, we passed down guidance through the chief of the National Guard Bureau to the Adjutants General; they followed the rules as written by the Secretary of Defense and about 90 percent of those dual status and also non-dual status technicians are back to work.

There was a request from the Governors of the hurricane States—when the hurricane was coming up towards Texas and Florida and the Gulf States—to bring on, as a special exemption, more dual status technicians because they were in need to protect the civilians of those great States, and the Secretary immediately granted that exemption because they were needed for duty to protect those great States.

Ms. BORDALLO. Well, thank you very much, and thank you for your long service with the National Guard. I represent the U.S. Territory of Guam and we have a very strong Guard, Air Guard and Reservist—

Mrs. WRIGHT. Yes, ma'am, you do.

Ms. BORDALLO [continuing]. Program.

Mrs. WRIGHT. Thank you.

Ms. BORDALLO. So, thank you very much, and I yield back, Mr. Chairman.

Mr. WITTMAN. Very good. Thank you, Ms. Bordallo.

We now go to Mr. Forbes.

Mr. FORBES. Mr. Chairman, first of all, thank you and the ranking member for holding this hearing, and to each of you, I want to thank you for being here.

We don't always agree on things, but I just really want to thank you, Secretary Hale, for your efforts and each of you for trying to get our men and women back to work.

Thank the Secretary for his efforts in trying to do that. I know that these are trying times for you, very difficult times.

And I know probably each one of the three of you would rather probably have had a root canal than have to come over here and deal with Members of Congress today, but it is a tribute to you that you are willing to do that and to talk with us.

And regardless of how we got here, I just hope that maybe that will, by osmosis, travel up to our leadership and we will see the President and the Senate and the House all be willing to sit down and negotiate and talk, because I think that is important.

Second thing is, Congressman Turner and I were talking about before we came and started this hearing that the one thing that is not being discussed a lot, in all of these discussions, is the enor-

mous impact that the President's sequestration, that ultimately Congress signed off and agreed to, is going to have on us if we don't turn those numbers around.

And as we are trying to change those numbers, it is somewhat hurtful. Because as I look at this legislation, when we look at DOD, many of us thought it was Armed Forces, members of the Armed Forces, and the people that were supporting them.

And I think it kind of takes us back to realize that there are a number of people in DOD and civilians that aren't supporting members of the Armed Forces.

So, Mr. Chairman, it might be helpful for us at some point in time to get a complete breakdown—

Mr. WITTMAN. Yes.

Mr. FORBES [continuing]. As to what part of these civilians and individuals are not supporting our Armed Forces members so that we can at least clarify that as we go forward in these discussions further.

Mr. WITTMAN. Absolutely—

Mr. FORBES. And then the question that you have elaborated on and Secretary Hale, you indicated this, about the private yards and the private companies, and we have had a lot of people contact us about that.

During the shutdown, are we asking our private shipyards to undertake work such as maintenance or new construction that is supposed to be funded by fiscal year 2014 dollars without being compensated at this time?

And if so, how would you estimate the risk these yards are taking on? What do you believe will be the impact on suppliers and small businesses that support these efforts from what we see taking place now?

Secretary HALE. Can I go back to your first statement? We believe strongly that all of our civilians support members; because of the discussion we had before about the requirement for a Secretarial determination, and the way the law was written, we felt we had to identify those whose support was less direct or longer term.

Mr. FORBES. Mr. Secretary, if I could just stop you there. I grant you, we need to be more clear. Because oftentimes, we hear people coming over from the Department saying, "We need more discretion, we need more discretion." When we try to get you that, it is no good deed goes unpunished.

The second thing is—

Secretary HALE. Touché.

Mr. FORBES. If we read this language in here, it doesn't say "direct support." It says "support." And just being, you know, the country lawyer that I am, that means to me what it says.

And so, it looks like somebody has added the phraseology "direct" as opposed to "support." And so, we need to be a little clearer, maybe not give discretion, like we thought we were doing here.

But secondly, I don't know how much clearer we can be when we use the word "support" and somebody outside adds the word "direct."

So, maybe you could tell me how the interpretation "direct" was added in there.

Secretary HALE. Well, I think the thing that would be helpful would be to drop the Secretarial determination. If we have—

Mr. FORBES. And, listen, we will take that. I am going to argue that 'til the cows come home—

Secretary HALE [continuing]. Just say all—

Mr. FORBES. From now and we are not going to get—

Secretary HALE. Let's hope we never do this again. Let me go to your private sector question.

Mr. FORBES. Okay.

Secretary HALE. I am concerned, yes. We are asking all of our vendors right now with whom we are entering into contracts using fiscal 2014 funds to essentially take an IOU.

You ask me when? It ends when the lapse does. We will pay them as soon as it ends or as soon thereafter as we can. Your judgment is better than that. I am praying for soon.

But, yes, we are, and I don't know how they will react. I assume maybe some of the larger ones will have more ability and perhaps willingness to stay with us. I am more concerned about some of our smaller vendors.

But we are trying to watch—I didn't answer an earlier question, but let me take this opportunity to answer it—our communications. We are trying through industry associations and other means to stay in contact with our vendors.

Frank Kendall, my colleague who is the Under Secretary [of Defense] for Acquisition, Technology and Logistics is heading that effort, and to tell them what we know and what we can do under the law.

Mr. FORBES. Mr. Secretary, thank you for that.

And can you maybe revisit the question you posited to me a little bit earlier about the word "direct." Where did that come from and who brought the word "direct" into—

Secretary HALE. Let me ask our acting general counselor.

Mr. FORBES. Oh, I am sorry, yes, sir. I am sorry. Mr. Taylor, I didn't mean to leave you out.

Mr. TAYLOR. If I may, I am afraid "direct" is not in the statute and it is not in our implementation of the statute. So—

Mr. FORBES. Maybe I misunderstood. I thought somebody said that word—

Mr. TAYLOR. Well, he did say that word—

Secretary HALE. I was trying to summarize.

Mr. FORBES. Okay.

Mr. TAYLOR. He did say the word and, frankly, it reflects some of the course of consideration, but the ultimate judgment was the statute says "support" and that is how we should implement it; support, not direct support.

So, that opened up the aperture quite a bit, and we have seen the results of that with about 95 percent or so of people back in. There are some functions that even with—understanding that the support need not be direct, that seem to be outside the scope of—

Mr. FORBES. Mr. Taylor, I only got a few more seconds left, and I respect all three of you, but did I misunderstand? I thought that Secretary Hale said, just a few moments ago, that everyone at DOD, they believed, did support our members.

Are you saying that that might—maybe I didn't hear that correctly or that wasn't accurate? Or, help me with that.

Mr. TAYLOR. Yes, I am afraid that that was a bit of an overstatement. They support the Armed Forces, perhaps, but not necessarily members of the Armed Forces. So, looking at, is there a distinction—

Mr. FORBES. And let me just say, this is what "is" means, all these kinds of things—

Mr. TAYLOR. Yes.

Mr. FORBES. And I am going to just tell you, the American people don't understand that. We don't understand that. We thought when we were saying we are giving you discretion, we are doing a good thing. We realize we were doing a bad thing.

But secondly, when we use the common English word "support," we thought that is what you were going to do, and I think Secretary Hale believed the same thing and it is just unfortunate that a lot of people got caught in this vice because somebody started bringing in extraneous verbiage in there.

With that, Mr. Chairman, I yield back.

Mr. WITTMAN. Thank you, Mr. Forbes.

We will now go to Mr. Courtney.

Mr. COURTNEY. Thank you, Mr. Chairman.

Secretary Hale, just so I am clear, for those civilian employees who were recalled on Tuesday of this week and who are today working, when October 15th arrives, my understanding of your testimony is that they will receive a paycheck. Is that correct?

Secretary HALE. Yes. I think it is not October 15. The pay day is tomorrow, and then it will be 2 weeks from tomorrow for most of them. Yes, if they were working, POMA, we can pay them on time and in full. The ones who may not get paid are those that remain on furlough.

Mr. COURTNEY. Right. I understand that.

Secretary HALE. There it would take special legislation that you have passed.

Mr. COURTNEY. Right. So—but for those who have returned on Tuesday who will be paid, will they be paid from October 1 through the end of the—

Secretary HALE. Okay. For the pay day Friday, it is going—for those who were on furlough, the answer to that is no. They will be paid for the 6 days that occurred prior to the lapse of appropriations, but we don't have legal authority to pay them for the 4 days when they were on furlough unless that legislation is enacted. Then we could pay retroactively after the lapse ends.

Mr. COURTNEY. Okay. I would appreciate it if your office could put that in writing.

Secretary HALE. It is in writing. It is actually on the DFAS [Defense Finance and Accounting Services] Web site now, and I don't know where else. Is it on your Web site, too? Yes, it is at least on the Defense Finance and Accounting Service Web site, an explanation for each—a number of categories.

Mr. COURTNEY. All right. I appreciate that. When you itemize sort of, you know, the gaps that, you know, the bill and POMA still leave within the Department of Defense, again, you talked about Afghanistan, CERPs, other issues. In my conversations with folks,

some of whom have returned this week, what I am hearing is that consumables are also not being paid for right now.

And so for example, I talked to one of those dual status technicians this morning from Lebanon, Connecticut, Tim Broder, who is a helicopter mechanic at the TASMG [Theater Aviation Sustainment Maintenance Group] facility in Niantic, Connecticut.

He said they don't have any fuel to fly the helicopters that they are repairing. So they are at work. They are repairing, but because the fuel consumable account isn't provided for, which obviously this bill and POMA can't touch because it is a totally separate item, that consumable is not provided for.

In addition, I also spoke to some folks at the Coast Guard Academy in New London who, again, a number of their staff returned on Tuesday, but I was told that consumables such as toilet paper and coffee filters are also now close to being depleted.

I mean, I never thought going to Congress I would ever ask a question about this, but I mean the fact of the matter is that this really shows we are just running around with a garden hose here in terms of trying to sort of run the Department.

We need a comprehensive bill that funds the entire government so that we are not again just sort of constantly seeing something else pop up that is not provided for. And again, for the record, H.R. 372, which is the clean CR that cleared the Senate and the President has said he has signed, will be available for Members to sign a discharge petition starting on Saturday morning.

Again, seven times in the last 30 years the discharge petition process has been used to bring a bill up for consideration. We have an opportunity on our side of the table here today to bring this to an end and get a comprehensive measure through that will fund all of the government and make sure that everything from coffee filters to helicopter fuel is going to be funded and that everybody can go back to work.

I mean, and that is really what—again, despite your best efforts to interpret POMA, again, issues like consumables are still left out as we sit here this morning. Isn't that correct?

Secretary HALE. Yes. Absolutely. We need this lapse to end because, as you just said, we can't enter into contracts for fuel or supplies unless it is an excepted activity. And even then, we can't pay the vendors and it will become increasingly a problem. And it probably already is to a limited extent, but it is going to get significantly worse.

Mr. COURTNEY. Thank you. I yield back.

Mr. WITTMAN. Thank you, Mr. Courtney. We will now go to Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman. And thank you for being here today. Although I have to tell you, I—it may be a root canal for you, but additionally, I don't feel like you should have to be here. I am very grateful that I had the privilege of serving as an Army National Guard JAG [Judge Advocate General] officer for 28 years.

And we had to come up with tough decisions, but we always made the decisions in the interest of our military members, our military service members, our family members. We made determinations in the interest of achieving the mission of protecting the

American people. And I am very, very concerned that what I see is politicization.

In fact, it was indicated that in addition to working with attorneys of the Pentagon, the attorneys of the Justice Department were contacted. To me, the Justice Department is truly totally politicized. It is a political arm promoting the policies of the President of the United States. It is not unbiased.

Additionally, I understand that OPM, Office of Personnel Management, attorneys, Office of Management and Budget attorneys may have been contacted. Again, these are political appointees, largely, who are making political decisions. And the decisions to me are wrong. What they are doing is trying to create pain for the American people.

And I just—I just find it outrageous, and in particular the denial of the death benefit, \$100,000, to American heroes who are making it possible we can even be here today, to deny the \$10,500 burial benefit for persons who have served our country.

And then the reports yesterday were I think outrageous. And that is that the family members of the grieving deceased who were returned to Dover were denied the travel benefits. But at the same time, the Secretary of Defense had his benefits. I just think this should be addressed.

And that is why—and hey, the law is clear. It says “Pay Our Military Act.” It is quite short and it is very clear. It says to provide pay and allowances to members of the Armed Forces. It is right here. It is hardly more than a page. The Pay Our Military Act, that is it. And that is what should have been done.

In fact, last Friday I sent a letter to Secretary Hagel:

“As you are well aware, the Pay Our Military Act, H.R. 3210, was signed into law and provides an appropriation for the pay and allowances of members of our Armed Forces, our defense civilians and contractors, who sacrifice so much for the defense of our country.

“I know that you have made the legal review of the legislation a top priority, but I am very concerned that further delays may interrupt essential pays and allowances. For example, it has come to my attention [that] the Department of Defense is not currently paying several critical allowances earned by members of the Armed Forces who have made the ultimate sacrifice. These include the Death Gratuity, which is payable to a designated beneficiary, in a lump sum of \$100,000, for a death on active duty or inactive duty training and Burial Benefits which provide up to \$10,500 to survivors to cover expenses related to the burial of service members. It cannot in good conscience be denied, these benefits to survivors of deceased members.”

These you will find—they are a summary of pay and allowances I ask taken from November 2011, seventh edition of the military background papers published by the Under Secretary of Defense for Personnel and Readiness.

And Mr. Hale, could you provide me—and I have asked this—a summary of which of the pay and allowances on that list will not be paid and the rationale for not payment? If there are other pays and allowances which are not on the attached list, if you could identify them for your response, I would like to know.

Secretary HALE. We will provide that. Let me tell you, until Monday we had about 10 percent of our staff and they were by law only allowed to work on excepted activities. So we are working on your letter.

[The information referred to can be found in the Appendix on page 73.]

Secretary HALE. Let me correct some facts though. We are paying the travel for all of those people. We did it through various means, used the government purchase card, in some cases legal use of gifts. All of them got their travel taken care of. Burial benefits were taken care of. And in the manner I described or through law, one of the ways we will pay those death gratuities.

We have that set. We will either do it through the Fisher Foundation and reimburse them or through the law if that is enacted—passed by the Senate and enacted. So we are going to take care of those people. We feel just as strongly as you, Mr. Wilson, and they will be taken care of.

Mr. WILSON. But it proves my point. There should have not been a delay. There should have not been a denial. And we should—

Secretary HALE. There shouldn't have been a lapse. That is what we shouldn't have had.

Mr. WILSON. We should be showing respect to our service members and military families. I yield the balance of my time.

Mr. WITTMAN. Thank you, Mr. Wilson. We will now go to Mr. Loebssack.

Mr. LOEBSACK. Thank you, Mr. Chair. Thanks to all of you for being here today. Appreciate what you are attempting to do during this lapse. I couldn't agree more. The lapse shouldn't have happened in the first place.

I am talking to folks in Iowa in my congressional district. And if they hear any of this—if they hear this hearing on—or watch it on C-SPAN over the weekend, I think they are going to just sort of throw up their arms the way they are now and wonder when the hell this is going to get over.

And that is up to us here on this panel to figure that out, along with the President of the United States. And they are telling me that they are sick and tired of all the grandstanding going on here in Washington, DC. They just want us to work together and get this thing done. And I think that is the sentiment probably out there of the vast majority of the Americans.

And certainly you folks want to see it. I appreciate, Mr. Hale, what you are saying about the lapse. You know, it should never happen. There is no question about that. But now here we are. So I think a lot of legitimate questions are being asked today, and I appreciate my colleagues asking those questions.

I just have a couple I would like to address—couple of topics I would like to address. The first one is has guidance been given to the adjutants general and the Governors regarding how POMA affects the status of Federal-State cooperative agreements and the State workforces that support them?

Because as you know, the cooperative agreements that I am talking about here, they are very important for the National Guard, for providing facilities management, range and training land manage-

ment, family support, and other functions that support the National Guard in preparing for Federal missions.

So many of these functions are performed by State employees, as many of you know—as all of you on the panel know. And the current status of those State employees appears to remain clear as well. So is there guidance at this point that has been issued? And if not, when will it be issued?

Mrs. WRIGHT. Sir, General Frank Grass has conference calls with the adjutants general twice a day where he puts out guidance that comes through the Department. You are right. Every State has an MCA, or a Master Cooperative Agreement. Every State's Master Cooperative Agreement is different based upon their individual State.

Employees that work there are funded at times 25 percent from the State, 75 percent from the Federal Government. The facilities, the different armories—now we call them readiness centers—are also funded. Some of them are funded with that 25/75 percent balance. Some are funded 100 percent Federal.

But that Master Cooperative Agreement is so very important. And as you know, our State budgets aren't as robust as they used to be years ago.

And so what we are seeing now, is because these employees can certainly work, but the Federal Government can only give the State an IOU, because we cannot provide the funding. We can only obligate the funds, but we can't pay them hard, cold cash, if you will, that the States can't pick up that balance and pay them.

So at times, there will be furloughed employees throughout individual States that add those very important jobs and responsibilities to the National Guard for readiness, and for training, and for family support.

Mr. LOEBSACK. Thank you. Okay, I appreciate that. And we will stay on top of that. Either of you want to mention anything? Okay, thanks.

I got a question about the working capital fund facilities. You know, those folks that are being funded out of the working capital fund essentially were largely able to avoid furloughs, to date at least.

Is there a concern at the moment that the working capital fund accounts will run low, or that entities funded through these accounts be required to cease operations, especially because of diminished orders that might be caused by reduced operations that have resulted from the shutdown? In other words, effects that were unintended that were unforeseen?

Secretary HALE. Well, they did—most of them continued working, because under the law, they were being paid by appropriations in fiscal 2013, made in fiscal 2013 and before. So they went into that cash, and they are being paid with that. We think we are at least a couple weeks out for all of our working capital funds, before we run out of cash. And longer, for some of them.

If we get that far and run out of cash—and I certainly hope we don't, but if we do—then we will have to identify those workers in the working capital funds who were excepted, or who qualify under POMA. And they could continue working.

I think most of them, maybe all of them, would qualify under POMA. And therefore, they would continue working.

Mr. LOEBSACK. I had a number of personal concerns expressed by folks at the Joint Manufacturing—

Secretary HALE. I don't blame them.

Mr. LOEBSACK [continuing]. Technology Center that are short on money—

Secretary HALE. Let me go back to a point that has been made several times. We might be able to keep the people, but we are not going to have authority, unless it is an excepted activity, to buy parts and supplies for them. And therefore, I think their work would certainly be degraded in its effectiveness, perhaps significantly.

And even if it is an excepted activity, again, we have said before, we can't tell the vendors when they are going to get paid. And I don't think any of us know exactly how long they will stay with us.

Mr. LOEBSACK. Thank you. Thanks for being here. Thank you, Mr. Chair.

Mr. WITTMAN. Thank you, Mr. Loeksack. We will now go to Mr. Turner.

Mr. TURNER. Thank you. Mr. Hale, I do appreciate the difficulty of trying to thread through the weaving process that we are currently in as a result of failure of the President to negotiate, failure of the Senate to pass appropriation bills, and the failure of a dialogue to go forward.

I opposed the President's sequestration. It resulted in 12,000 people being furloughed in my community. I am opposed to the shutdown, which has resulted in 8,700 people being furloughed from my community.

But Mr. Hale, I want to walk you through some of the timing for this. The Pay Our Military Act, passed by the House, passed by the Senate, signed by the President, you indicated in your testimony was effective September 30th.

You also say that the people who were furloughed were furloughed because of a lapse of appropriations. As you know, the lapse of appropriations for the rest of the government occurred on October 1st. Pay Our Military Act was effected September 30th.

So of the people who were covered under Pay Our Military Act, and based upon the DOD's interpretation, Mr. Hale, based upon the DOD's interpretation, as we now know from that interpretation, the fact that they are back to work, we know who those people are. They are knowable as to who DOD says fall under Pay Our Military Act.

I believe our version and view is broader. But there is some difficulty with the language as I understand. But we know who these people are who are back to work.

If they were covered by appropriations that occurred on September 30th, and they were furloughed for the week, they were not furloughed as a result of a lapse of appropriations. I mean, the President signed this bill. But yet, the President furloughed them anyway, and the Department of Defense furloughed them anyway.

So I am very concerned by the language of use of, "They were furloughed by the lapse of appropriations."

Mr. Hale, you did say that the Pay Our Military Act was effective September 30th, prior to the lapse of appropriations, did you not?

My second concern, Mr. Taylor, is the issue that you have on the interpretation I have, Secretary's interpretation of the Pay Our Military Act. And we are all very concerned about it.

They have inserted the word "active" service. Mr. Hale, I appreciate—you had said that it would have been a lot simpler if we had not given the Secretary authority, it certainly would have been a lot simpler if we had said "all."

But nonetheless, the Secretary's determination inserts words that are not in this. I have the bill in front of me, the Pay Our Military Act. And it says, "allowances to members of Armed Forces," as defined in a section. It has got a definitional section, which I understand goes to the issue of Army, Navies, Marines, like.

Mr. Taylor, why did they insert the word "active"?

Mr. TAYLOR. Sir, if you refer back to paragraph 1—

Mr. TURNER. I have it in front of me.

Mr. TAYLOR. Okay. "—to provide pay and allowances to members of the Armed Forces as defined in Section 101(a)(4), including reserve components thereof, who perform active service during such period."

Mr. TURNER. Is that where you get the word "active"?

Mr. TAYLOR. Yes.

Mr. TURNER. Okay. Well, you know, Mr. Taylor, I think we all understand that a word that says "including" means that a larger subset of the prior sentence is what it is taking from.

It doesn't say, "limited to." It says, "including."

You don't use the word "including" unless there is a broader category that you are taking it from. So Mr. Hale, I appreciate, you told us all of the difficulty of—that the Secretary had to certify something, and so he thought he should take a subset less. But don't you agree that he could have taken a broader version of this, especially since Mr. Taylor just agreed the language is inconclusive?

Secretary HALE. I will quote the Secretary, that he was acting on advice of the Department of Justice. And he made that statement in his remarks—

Mr. TURNER [continuing]. And that is what I based part of my question on—

Secretary HALE [continuing]. And we also accepted the Department of Justice's opinion.

Mr. TURNER. Mr. Hale, just a second. That is what I was actually getting to. I appreciate that was your answer.

Who in the administration was in touch concerning the interpretation of this language?

Secretary HALE. I mean, we are not going to get—

Mr. TURNER. I mean, I do want you to get into it, because this is the hearing, and we are on interpretation. I would like to know who—not agencies—who told the Secretary that he was to interpret this more narrowly than Mr. Taylor and I just discussed, is obviously broader?

Secretary HALE. The Department of Justice was the person, or the organization. And we are not going to discuss the internal discussions—

Mr. TURNER. Mr. Hale, this is Congress. We have the ability to ask you the question of who. And you can't just say some nameless faceless bureaucrat, you know, made the determination of the interpretation of our law. You were in touch with people. Who was it?

Secretary HALE. I am not going to discuss the internal discussions with the Secretary of Defense, or of the Attorney General.

Mr. TURNER. Well, I am very concerned also, Mr. Chairman, about the fact that the Secretary's communication also indicates that there could be additional furloughs. And I am concerned as to who may be at the table in determining whether additional furloughs occur. Thank you, Mr. Chairman.

Mr. WITTMAN. Thank you, Mr. Turner. Secretary, if you could, if you could finish those questions of Mr. Turner for the record. I know that would be very, very helpful.

[The information referred to can be found in the Appendix on page 73.]

Mr. WITTMAN. We will now go to Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. And thank you all for being here. I have got to say that sitting here has been infuriating, frankly, not because of what you are saying, but I think, you know, it really brings up the notions for many of the questions that my colleagues have had, particularly on the other side of the aisle, that they didn't have the answers before some of the decisions to go ahead and shut down the government were made. And I think that is too bad.

I wanted to ask Mr. Hale, and perhaps this is to Mr. Taylor, as well, there are a number of times that it is appropriate for Members of Congress that are writing legislation to consult, to ask, to collaborate a little bit about what the intent here is. And in this case, was that done?

Secretary HALE. I am not aware of any, but I can't know that for sure. I don't believe there was any with my office.

Mr. TAYLOR. I am not aware of any either. But you are right, it is a frequent practice to have consultation and clarification. And it is very helpful to have that interchange.

Mrs. DAVIS. So in this case, one could surmise, then, there was no interest in being helpful, in terms of what you eventually had to do. That is discouraging, because this is something that is very important.

Is there anything also that you think we are likely to see that is similar to the bill that we passed yesterday that would come up that we might not be aware of? Is there anything that—any area that—

Secretary HALE. To the one on benefits for fallen?

Mrs. DAVIS. Yes.

Secretary HALE. We haven't had a chance to go through that thoroughly, frankly. So I think I would like to answer that for the record.

[The information referred to can be found in the Appendix on page 73.]

Mrs. DAVIS. Okay, thank you. I want to turn then to medical care that our members of the military, and also civilians, might be facing. Now, in terms of Active Duty, I am assuming that, because they are being paid, their benefits were being paid as well, and maybe as well for families.

Secretary HALE. Yes.

Mrs. DAVIS. But for those who have been furloughed, how will those health care premiums be paid?

Mrs. WRIGHT. Thank you, ma'am, for the question. They will continue the health care premiums. Frankly, I will have to take it for the record of exactly how they will be paid. But I do know that those civilian employees that are furloughed will continue their health care benefits during the period of time that they are furloughed.

Mrs. DAVIS. And their contribution will be coming as well?

Mrs. WRIGHT. Their contribution will—we will work that—

Mrs. DAVIS. Personal and the government?

Mrs. WRIGHT. Correct. Their government contribution will come as if we discontinued the lapse, and we start, you know, paying the furloughed individuals. And then when the employee gets back, they will in turn give to the government their contribution.

So I need to—I can get back to you on the very specifics, and take it for the record.

[The information referred to can be found in the Appendix on page 73.]

Mrs. DAVIS. Okay. Obviously, that would cause some anxiety, I think, on the part of many of the men and women.

Mrs. WRIGHT. Yes, ma'am, but I think the key is that they do, right now, have medical benefits.

Mrs. DAVIS. Now, what about the medical care contracts, the managed care contractors as well, because many of these contractors, I understand, are paying some of the medical bills and they are not being reimbursed, so at some point, I suspect they expect that they are going to be paid, but many of the contractors are already holding perhaps, I think about \$100 million in due bills. So, what is the DOD doing to make sure that they don't stop paying the medical bills?

Mrs. WRIGHT. So, ma'am, right now with the managed care contractors, we have been in touch with all of them. We have money, about \$300 million I want to say, that we can continue to pay them for about a week. That is why it is critically important that we really do end the lapse.

After that, we have been, as I said, we have been in contact with them because the thing that we don't want to have happen is for that contractor to be in touch with their provider, and an individual, a family member, or a retiree to go to that provider and be told that they can't be seen.

So we are working diligently with a public affairs campaign to stop that. But frankly, if they can't assume the bills that they are incurring, you know, they are in need of the money. And that is why to discontinue the lapse is critically important to the health and well-being of these members.

Mrs. DAVIS. Thank you very much. Thank you, Mr. Chairman. This is obviously a lot more complicated than people thought.

Mr. WITTMAN. Yes. Thanks, Mrs. Davis. Just to let the committee members know, subcommittee members know, the Senate just passed by unanimous consent the death benefits bill that the House sent to them yesterday, so it is on its way to the President's desk, so we are on the way, at least partially, to getting it, a portion of what we have been talking about today done. And now we will go to Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman, and thanks for holding this hearing. Secretary Hale, on September 30th, the President signed into law H.R. 3210, the Pay Our Military Act. This act provided full funding to pay all of our military, all of our defense civilian employees and designated contractors. The intent of this law was crystal clear. Pay our military and their civilian counterparts and keep them at work. And yet, the Department of Defense kept these defense civilians from working for a week.

I am pleased that 90 percent of DOD civilians were eventually called back, but I think it should have been 100 percent, and it should not have taken so long. Why did this take a week? Who made this decision? Was it the Pentagon? Was it the Department of Justice? Was it the White House? Who made the decision that took so long?

Secretary HALE. The law required a Secretarial determination, and we had to go through a process of determining compliance with the law, and that is what required the time, so that is the reason. We did it just as quickly as we could, but we also had to do it in a way that we could defend legally. Bob, do you want to add to that?

Mr. LAMBORN. Okay, I am not really getting an answer. What I am wondering, among other things, is was it a political decision?

Secretary HALE. No.

Mr. LAMBORN [continuing]. As opposed to a legal decision?

Secretary HALE. It was a legal decision. I mean, the law says the Secretary will make a determination and in order to comply with the law, we needed a process that led to that determination, and that is the process that went on during those days.

Mr. LAMBORN. Here is why I am questioning. A few blocks from here on the National Mall, we have World War II veterans who come here on honor flight, they are barricaded out of the memorial that they had paid for. We see immigration activists permitted to have a rally on the National Mall. I think it is outrageous that our veterans were not allowed. Some of them—I met one man in a wheelchair, 97 years old, and he fought at Guadalcanal. He wasn't allowed, had we not moved the barricades, he was not allowed into the World War II Memorial.

It is blatant gamesmanship, and that is why I have to ask the question. Was this decision political as opposed to legal?

Secretary HALE. And I am giving the answer. It was not political. We were required to do a determination, and we felt we had to go through a process to support that determination, and it wasn't very easy because of the difficulty of determining who should stay off furlough. And incidentally, it was more like—it is more than 95 percent back. I mean, we got most of them back, so—

Mr. LAMBORN. You are right—

Secretary HALE. That is the reason. No, it was not political.

Mr. LAMBORN. You are right. Ninety-five percent of the total population, 90 percent of the—

Secretary HALE. More, actually.

Mr. LAMBORN [continuing]. Of the civilian side, yes, okay.

Secretary HALE. We have about 7,000 DOD paid civilians remaining on furlough as of today, out of around 750,000, so, now that number is going to change some as—

Mr. LAMBORN. Okay, so that was my next question. Changing the subject to those seven or so thousand. Will some of them be brought back, and if so, how soon?

Secretary HALE. At the moment, we don't have any plans to bring them back, but we are evaluating constantly. What I really hope is that we bring them all back, because this lapse of appropriation ends. That is the way to fix this, but at the moment, unless some circumstances change, we don't have plans to bring them back until the lapse ends.

Mr. LAMBORN. Okay. Thank you, very much. Mr. Chairman, I yield back.

Mr. WITTMAN. Thank you, Mr. Lamborn, I go to Mr. Enyart.

Mr. ENYART. Thank you, Mr. Chairman. Mr. Hale, you know, Secretary Wright and I served together as two-stars, and I know that she and I had to make some tough decisions in those positions. Probably, a whole lot like some of the tough decisions that you have had to make. I appreciate that. Having had to make tough decisions, I know what it is like.

Now you know, some of the questioning that I have heard sounds to me a whole lot like that old law school joke, the question you ask on cross-examination: "Well, Mr. Hale, when did you stop beating your wife?"

Well, you know, Mr. Hale, it is obvious to me that there is a conspiracy between the Secretary of the Defense and the Attorney General to make it as painful as possible on the civilian employees of the Department of Defense, and isn't it true, Mr. Hale, that you were involved in that conspiracy?

Secretary HALE. Is this the "stop beating your wife" question?

Mr. ENYART. Yes, it is, Mr. Hale.

Secretary HALE. I think I will pass.

Mr. ENYART. Thank you. Well, Mr. Hale, is there a conspiracy to make it as painful as possible on the American public?

Secretary HALE. No. I think if you read Secretary Hagel's statement, you will see we value all of our civilians. This is one of the more painful acts, maybe worse than sequestration when we had to furlough people then that I have gone through.

But we read the law to say there had to be a Secretarial determination and we went through a process and we would have preferred not to, but we felt that was what the law required, and we did it.

Mr. ENYART. Mr. Hale, would you tell me please, what the Department of Defense has to do when the appropriations authority for that Department lapses?

Secretary HALE. We, at that point, only have authority under exceptions in the law, essentially for safety of life and property, which are interpreted to mean the excepted activities I have discussed before, military operations, police, fire, that kind of thing.

Now POMA did change that. It is an appropriation, so for pay and allowances of military and pay and allowances of civilians as determined by the Secretary, and contractors as determined by the Secretary, we do have some additional authority beyond what I just said. But had we not had POMA, we would have only been able to do excepted activities, and we wouldn't have been able to pay in time and on full.

Mr. ENYART. Now Mr. Hale, can you tell me please, if Congress—Congress—Republicans and Democrats, if Congress does not lift the debt ceiling, will our uniform military personnel receive their paychecks on November 1st?

Secretary HALE. Yes, they will, because of the Pay Our Military Act.

Mr. ENYART. November 15th?

Secretary HALE. October 15th, they will, on time and in full.

Mr. ENYART. No, no, November 15th.

Mr. TAYLOR. This is after the debt ceiling.

Secretary HALE. Oh, I am sorry. After the debt ceiling.

Mr. ENYART. After the debt ceiling.

Secretary HALE. Well the debt ceiling, which I think is October 17th, so as Secretary Lew has said, is a very different kind of situation. Let's leave aside, if we have a continuing resolution or appropriation, we will all be back to work, the debt ceiling for the Department of Defense would mean some late payments, progressively later, potentially, depending on what decisions are made about who to pay and when. So it is possible that there could be a delay in that pay date, and the ones that occurred after a debt ceiling.

I might add that the consequences for the Nation as a whole are potentially much more far-reaching in terms of default, but I think that is beyond what I should be talking about.

Mr. ENYART. So what you are telling me then, sir, is that once the full faith and credit of the United States of America is breached, there may well be payments not made to soldiers, soldiers in combat zones. There may not be defense contractors paid. We are not going to be able to buy the gas to fly the planes, is that what you are telling me, potentially?

Secretary HALE. They wouldn't be—potentially, they wouldn't be on time. They could be delayed. Yes, all of that is possible.

Mr. ENYART. Thank you. I yield back.

Mr. WITTMAN. Thank you, Mr. Enyart. We will now go to Mr. Nugent.

Mr. NUGENT. Just one clarification in regards to the last question. Who makes, and maybe this is outside your purview, but who makes the determination of the dollars that are coming into the treasury, if that were to occur, worst case scenario, on October 17th? Who makes the determination as to who gets paid?

Secretary HALE. I think that is out of my purview.

Mr. NUGENT. I would suggest to you, though, that it is the President. So if, and I have three sons that currently serve, so if there was a decision to be made, I would suggest to you that it would be the President.

I would also suggest that, you know, this body passed an appropriations act quite awhile ago, and had the Senate, correct me if

I am wrong, had the Senate passed an appropriations act, gone to conference if we couldn't agree with the language, the President could have signed it, this would be a moot point, we wouldn't even be talking about it. Am I correct?

Secretary HALE. Yes. I mean, assuming that whatever was signed provided—

Mr. NUGENT. Well, I mean, that is an appropriations act, so I would suggest to you that it would fund something within DOD. And, not lastly, but the Federal Cooperative Agreement for Employees, and I know each State is different, but in the State of Florida, you know, 78 firefighters that, up in the Jacksonville area, that would protect those crews when they refuel an airplane, because they have fuel, they are not included.

And so my question is, why not?

Mrs. WRIGHT. Sir, they are not included in the Master Cooperative Agreement, is that your question?

Mr. NUGENT. Right. Well, they are included in that agreement, but they are not getting paid. And they support a direct function of the Department of Defense in regards to things that are classified that I can't talk about, but they directly affect that.

Mrs. WRIGHT. But they are classified as State employees of the State of Florida, I believe.

Mr. NUGENT. Okay.

Mrs. WRIGHT. And so based upon that, they don't fall in the categories that were delineated in our Pay Our Military Act.

And I would have to read the Master Cooperative Agreement for Florida. But I would assume, like every other State, there was a formula that they are paid somewhat by the State, and somewhat by the Federal Government.

Mr. NUGENT. Okay. If you would get back to me on that.

[The information referred to was not available at the time of printing.]

Mr. NUGENT. You had made a statement earlier, though, as related to the dual certified technicians. And I want to make sure that I was clear on that.

You indicated that those dual certified technicians were not furloughed initially, during the time that the storm was out in the Gulf of Mexico, even after the September 30th reauthorization, at least from the standpoint of the Pay Our Troops. Was I correct in your interpretation that you said that those technicians were not furloughed?

Mrs. WRIGHT. No. Sir, I think what I said for the dual status technicians is that they were considered, they are civilian employees. They were furloughed.

If they were in the categories of safety of life, or health, they were in the excepted category, and not furloughed.

Mr. NUGENT. Would you—I understand, I hear there is safety and health. So dual certified technicians that certify and keep our helicopters flying in a State like Florida, which is obviously very important, particularly when you have a weather system out in the Gulf of Mexico. They were furloughed.

Mrs. WRIGHT. Yes, sir. And the decision—I am sorry, go ahead.

Mr. NUGENT. I am sorry. They were furloughed, am I not correct?

Mrs. WRIGHT. I would have to go back and look to see if the adjutant general made the determination to furlough them. But at the beginning, we followed the rules of safety of life, and health.

And so if the adjutant general felt that they were in those categories as a DOD civilian employee, as a dual status technician, then they would be in the excepted category.

Mr. NUGENT. Are you saying the adjutant general of Florida? Or whom are you referring to?

Mrs. WRIGHT. Yes, sir. If we are discussing the State of Florida—

Mr. NUGENT. So the adjutant general of Florida would make the determination that the continued safety of flight crews on helicopters and that, they would have made a determination of furlough?

Mrs. WRIGHT. Sir, I don't know what Buddy Titshaw did. I would have to go back and talk to General Titshaw to find out whether or not, during the beginning of this—

Mr. NUGENT. Well, who would he have gotten direction from in regards to doing that?

Mrs. WRIGHT. He would have gotten direction from the Department of Defense through the chief of the National Guard Bureau, who holds conference calls with the adjutants general twice a day.

Mr. NUGENT. So that would have come from DC [District of Columbia], though, correct?

Mrs. WRIGHT. It would have come from the Department of Defense, sir. But we would not have told him exactly who to pick. We would have told him the rules, and allowed at his discretion.

Now, I will tell you that when POMA was passed, the rules broadened, and the majority of the dual status technicians are back to work, should they fall into—

Mr. NUGENT. Well, I know they are now. But they were not on the 30th or October 1st, or October 3rd. They didn't come back until October 7th. And with that, I yield.

Mr. WITTMAN. Thank you, Mr. Nugent. We will now go to Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I just have a couple of questions, first with Secretary Wright. What impact have you seen on military and civilian personnel, recruiting and retention, as a result of this shutdown?

Mrs. WRIGHT. Ma'am, frankly, it is a little too early to tell exactly what the impact is. But I will tell you that is a very important part of my portfolio as the acting personnel and readiness. And we are monitoring that with the services on a daily basis.

Ms. BORDALLO. Thank you. You know, before I go to my last question, I just want to mention, I was reading her biography, and Mrs. Wright—or Secretary Wright—is a retired major general in the National Guard. You have an exemplary career—commanding general at the Pennsylvania National Guard, and the first woman, female helicopter pilot in the entire Guard. So what a wonderful background you have, Secretary.

Mrs. WRIGHT. Thank you.

Ms. BORDALLO. My last question is for Secretary Hale. How will the Department implement back pay once it is provided by law?

Will it be in a lump sum, or will it be spread out to avoid tax consequences to the individual employer?

Secretary HALE. You know, I think I will have to give you the details for the record. It says retroactive, the law, as it was passed by the House states, "retroactive pay as soon as possible," and therefore, I think we would do it in a lump sum.

But it will be certainly during this taxable year. So I don't know the exact time of payment will affect taxes. But let me take the detail. We haven't gotten to that one yet.

I mean, we are in triage mode, frankly. We are trying to get day to day, and survive this madness. So we haven't focused yet on that act. For one thing, it is not passed yet. So potentially, I suppose, could be changed.

Ms. BORDALLO. Yes. Well, thank you, Mr. Secretary. And once you have a little information, I would appreciate receiving it. And I want to thank all three witnesses for their testimonies today. It has been difficult. But you have done a good job.

Mr. WITTMAN. Thank you, Ms. Bordallo. I would urge Secretary Hale, if there is a question about that, to certainly consult with Congress. I think you will probably get some direct feedback on that.

Secretary HALE. Well, again, the words in the law the House passed seem pretty clear, "retroactive as soon as possible." So I think we would pay it as soon as possible. But it may take us a while. We have twisted our civilian personnel system like a pretzel, and then tried to straighten it out again.

And I think this payday is going to be with only a small number of errors, and that is a great testimony to a lot of work, hard work by people.

Mr. WITTMAN. Absolutely.

Secretary HALE. We will have to figure out how to do the retroactive pay, assuming it passes.

Mr. WITTMAN. Thank you, Mr. Secretary. Going down the list, Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman. Mr. Hale, I think as Under Secretary for the Department of Defense, you have really compromised your responsibilities.

And I think you have a tremendous conflict of interest. And the conflict of interest is this, that you really, I think, subordinated your responsibilities, I think, to achieve a political objective.

And the political objective was to inflict as much harm as you possibly could in your own Department. And when you said earlier, I mean, I saw the message you sent to your employees.

At 11:55 they received it, an e-mail from you on the 30th of September, hours after the President had signed the bill, saying that you were going into a shutdown for all civilians, and that you were basically going on prior law, and ignoring the current law that just overrode that whole process.

And here you said, in testimony earlier, that it is very difficult to determine what level of support, because it says in the bill, it says in the bill, "whom the Secretary"—"the Secretary concerned determines, or providing support to members of the Armed Forces described in paragraph, subparagraph one."

It doesn't say you have to categorize them as greater support or lesser support. That is not in the law.

And let me tell you historically how things work between the Congress of the United States and the executive branch, and that is when the intent is clear, and the intent was clear. In fact, I talked to your deputy on the phone the following day after I got that e-mail, where you weren't following the law, and had a conversation with him.

And he said, "Well, we are really not sure. We have got to talk with attorneys," and things like that. And he said, "Yes," you know, "you were clear on the House floor."

And in fact, there were three speakers that spoke on the House floor, and passed by unanimous consent in the Senate as to what the intent was. "But we still want to go through these attorneys."

Historically, when the executive branch follows the intent of Congress, there is no conflict. Who was going to complain that you were laying off civilian employees? Nobody was in the Congress because that was not our intent.

And you went out of your way at every possible turn to make this as ugly as possible, to inflict as much pain as possible on this Department. And I just think it is absolutely extraordinary.

And even we have a legal opinion from Congressional Research Service. And it clearly states that, yes, you could have paid the death benefit based on existing—based on even law prior to POMA.

And yet, you chose to do an interpretation to just maximize pain—just maximize pain. And I think not only do you have a conflict of interest, by subordinating your professionalism to that of a political agenda, but I think you have also compromised the national security of this country by creating such a disruption by trying to achieve that objective.

And I just think it is absolutely extraordinary what you tried to do. And I think it is just such an embarrassment to this country. And, yes, there is gridlock. I am embarrassed about that, too.

But you have compounded the problem by your conduct in how you have misinterpreted, intentionally, this law. And Mr. Chairman, I yield back.

Secretary HALE. I would like the chance to respond. I resent your remarks, and let the record show that. I acted on the advice of attorneys, and our best reading of a loosely-worded law. Did our best.

Mr. COFFMAN. Mr. Chairman, if I could—

Secretary HALE. And it was not—let me finish, please. It was not a political judgment. We were trying to do what we thought the law said, that is, a determination was required. And as I said, I resent your remarks.

Mr. WITTMAN. Mr. Coffman, your time is expired. If you have a question, we can take it for the record. Mr. Cook.

Mr. COOK. Thank you, Mr. Chair. I know it has been a long hearing. I have got a couple of comments, and then questions. And when this all happened, you know, this thing that, you know, it is never going to happen, or what have you, I am sorry, it is like this *déjà vu* all over again, because it happened to me many years ago.

And the impact on the military is just horrendous. So the one clarifying bill I thought was a great step in the first direction. I

tried to craft a second bill, which addressed some of the concerns about the Reserves, the inactive duty, those gaps.

And of course, it is not appropriation bill, so the chances for that are dubious at best. I would hope that we kind of learn from this a little bit, and that we have clear parameters of exactly what happens.

And, God, I hope I am wrong, if we ever go through this again, as to what is covered, what is not covered, so we don't have to have the legalese. I am not a lawyer, I never want to be. I am just a dumb Marine who was an infantryman that is worried about the troops.

And my bill—everybody has got a bill, I guess—3210, it is not an appropriations bill. It is a readiness bill to correct some of those problems, because I think you are absolutely right about some of the comments where, you know, when you start saying some civilians are not needed or what, we are getting away from that.

What we tried to do with the total force picture, and when we start saying non-essential personnel, I agree with you 100 percent on that.

When I was sworn, when I retired, we always used to have Civilian Recognition Day, because they were so much a part of everything that is going into this complex, large DOD force. And it includes Afghanistan.

And the reason I ran my bill was not to make a political statement or anything like that, or embarrass DOD or anything else. It is to address readiness.

When the Secretaries come in here and they say, "We have a problem," I am hearing, "C-4, not combat-ready."

And now it is going to be compounded after being compounded by the sequester. You know, I am not going to moan and groan, and attack you guys and gals. You know, I am just going to say I am always looking for solutions so we don't go through this drill again.

I am running out of time. But I did want to see whether the—part of the fix that I had talked to the Guard and Reserve, they said the original fix didn't go far enough. And some of the adjutants generals were concerned about that, you know, that gray area during—from drill, to drill, to drill in my bill.

Mrs. Wright, do you have any comment on that? Whether you think—I don't know if you had a chance to see this bill that I have.

Mrs. WRIGHT. Sir, unfortunately, I have not had a chance to see your—

Mr. COOK. Oh, it is great reading. It is a fantastic bill. You have heard that before, right?

Mrs. WRIGHT. But I will tell you that the Guard and Reserve was not in the POMA, and particularly—and only for the inactive duty for training, when they weren't training for a current or soon-to-be-deployed. And that will affect their readiness. It will affect their morale.

Mr. COOK. I don't mean to cut you off. But that is the point I am trying to make. You know, the Reserves has been probably used more than—50 years ago, they weren't used like this.

I mean, some of the Active Duty troops are doing rotations. But some of these Reserve units, it is unbelievable.

And by saying—I don't think a lot of people understand the total force concept, in terms of it is not just the military, it is not just the civilian component, it is the contractors—a lot of these civilian billets used to be done by the military.

They have been—the militaries, they have been civilianized. But they are still essential. They are still important.

So I think we have got to be very, very careful next time we do that. That is one of the attempts to get it forward. You know, I know it has been a long day. And everybody's tempers are short, and everything else.

I am coming at it from a standpoint that at least on my watch, I cannot accept a DOD or a military that is not combat-ready. And I will do everything in my power to make sure we are ready to go to war if we have to.

And right now, unfortunately, we are still at war with 60,000 troops. And we have got to take care of our troops that are there. Thank you.

Mr. WITTMAN. Thank you, Mr. Cook. Secretary Hale, I wanted to get just one clarification. We had talked about the death gratuities.

Can you tell me that for the families of the wounded that go to visit their loved ones in the hospital, will they continue to receive—it is not a reimbursement, I understand. It is a debit card. Will they continue to receive that in order to visit their loved ones at the hospital?

Secretary HALE. May I ask Mrs. Wright to answer?

Mr. WITTMAN. Yes.

Mrs. WRIGHT. Sir, we met with the services last night. And everything is continuing as if this lapse was not in place. They are receiving, there are specific rules to who can travel when.

Whatever was happening before is happening exactly the same now. They are going to see their wounded, should they fall in that particular category. And they are getting everything that they are required to get to see their wounded.

We consider that critically important, to take care of not only the wounded, but to take care of the family member. And it is proven that wounded heal faster when their family members are there.

Mr. WITTMAN. Absolutely. Well, that is great to hear that there is no change prior to the place we are now.

Before we adjourn, I wanted to take a moment to say thank you to two of our professional staff members who are leaving the committee this week.

They are fantastic folks: Roger Zakheim, who served as general counsel and deputy staff director. Roger has done a fantastic job. We will miss him, and we wish him well. Paul Lewis, who served as minority counsel most recently, but also as general counsel during previous terms. Paul has done a wonderful job here. And we are going to miss Paul.

And I have had opportunity to travel and work with both of these gentlemen. You won't find anybody finer up on Capitol Hill. As you know, they are both widely respected across the defense industry, in both branches of government, for their in-depth knowledge of the budget, and public policy, and legal issues facing the defense industry, and also, the issues that we face here as part of the House Armed Services Committee.

While they couldn't be here today, we want to applaud their service to our men and women in uniform, and wish them Godspeed as they start off in their new careers.

Secretary HALE. May I add to that?

Mr. WITTMAN. Please do.

Secretary HALE. I served a long time with Roger's father, Dov Zakheim, and got to know Roger well here. I knew Paul as well, I am sure. But I want to thank Roger, too. It was a pleasure working with him.

Mr. WITTMAN. Thank you.

Mr. TAYLOR. And sir, as a lawyer, I have worked with both Paul and Roger, and they are outstanding individuals. And we are delighted in the Department of Defense to have Paul coming back to us.

Mr. WITTMAN. Both of them are extraordinary individuals. And I know that they will continue to serve with distinction in their next step in their career. So we wish them all well.

And there is nothing else to come before the Subcommittee on Readiness of the House Armed Services Committee. We are hereby adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

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## **A P P E N D I X**

OCTOBER 10, 2013

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

OCTOBER 10, 2013

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**Statement of the Honorable Robert Wittman  
Chairman, Readiness Subcommittee**

**“The Interpretation of H.R. 3210: Pay Our Military Act”**

**October 10, 2013**

Welcome to today’s hearing focused on the implementation of the “Pay Our Military Act.” While the Department of Defense has ordered a significant number of people back to work this week, many remain furloughed and it’s important for this committee to understand the short and long-term implications for our nation’s readiness and, most importantly, current operations in Afghanistan.

I’d like to welcome to our distinguished panel:

The Honorable Robert Hale  
Under Secretary of Defense (Comptroller);

The Honorable Jessica Wright  
Acting Under Secretary of Defense for Personnel and Readiness; and

Mr. Robert S. Taylor  
Acting General Counsel.

This hearing is focused on the Department’s implementation guidance on the “Pay Our Military Act” which Secretary Hagel issued over the weekend and the questions regarding how decisions were made, who made them, and why. While many Department of Defense civilians and contractor personnel are back at work, others like a number of my constituents in the First District, are at home struggling to pay their bills, manage their households and feed their families. These dedicated folks are worried and anxious about the very uncertain future they face, asking hard questions about how the decision was made to recall roughly 90% of the workforce but not them.

Secretary Hale, please shed light on the decision making process. If you read the press reports, the initial DOD position was to recall all personnel to duty, which would have been consistent with congressional intent. The legislation

states, and I quote: that “the Secretary concerned determines” who provides “support to members of the Armed Forces.” The language, in my view, is clear on its face and gave Secretary Hagel the authority he needed to recall the entire workforce. While common sense doesn’t always apply here in Washington, it seems to me that every person who works in the Department of Defense supports “members of the armed forces.”

Even if, however, you don’t share my view and there’s room for disagreement on this point, the language provides broad latitude to interpret it in a manner that ensures minimal disruption to the Department’s mission and, most importantly, continuity of operations at a time when our military members are engaged in operations on the battlefields of Afghanistan. Our all-volunteer force is still at war and their families are experiencing the harsh consequences of this decision each and every day.

As we discuss how, according to press reports, lawyers at the Department of Justice interpreted the “Pay our Military Act” – our soldiers, sailors, airmen and marines are out on patrols, training Afghan soldiers, and accomplishing the high risk missions we’ve asked them to do. This is why every year for over 50 years the Armed Services Committee has worked in a bi-partisan manner to get the authorization bill done. Our troops and our national security depend on it. This year is no different – 3 months ago the House passed the FY14 National Defense Authorization Act with the overwhelming support of members from both parties. And yet we continue to wait for the Senate to take action on it. Two months ago, the House passed the FY14 Defense Appropriations bill, with overwhelming bipartisan support and 315 members voting in favor. Unfortunately that piece of legislation also has yet to be taken up by the Senate. If the Senate chose to go back to regular order and actually vote on bills and go to conference with the House to resolve differences in the legislation – as we used to do at one time – ironically enough, we wouldn’t be at this hearing and active duty, reserve, civilians, and contractors wouldn’t be suffering from this self-inflicted stress.

However, no one is suffering more than the families who lost loved ones recently in Afghanistan, during this unnecessary and preventable government shutdown. I was shocked and angered when I learned that five of our nation’s heroes died in Afghanistan over the weekend and their families informed that benefits couldn’t be paid. These benefits, which fall in the category of military

member “pay and allowances” authorized by the legislation, provide a small amount of financial support as families grieve so that during the most harrowing of times they can focus on what matters most. They allow families to travel to Dover AFB to receive their fallen loved ones. They also ensure we bury our heroes, those who have paid the ultimate price, in a dignified manner that recognizes their extraordinary service and sacrifice.

While I applaud the organizations that have stepped in to fill the senseless void created by government lawyers narrowly interpreting the law, it is Secretary Hagel’s responsibility to make the hard policy judgment and to do the right thing – find a way to treat our families with the respect due they’ve earned. Every leader in the military from the squad leader to the combatant commander is charged with the task of “taking care of his people.” It is an absolute embarrassment to this government and this Nation that we are failing in our duties to those who take care of us and protect us every day. Our Soldiers, Sailors, Airmen, Marines and their families deserve better and we owe them answers.

Before we proceed, I’d like to highlight that while the Readiness Subcommittee is hosting this hearing, we’ve invited the full committee to participate and I’d like to invite Chairman McKeon to make opening remarks.



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**DOCUMENTS SUBMITTED FOR THE RECORD**

OCTOBER 10, 2013

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113TH CONGRESS  
1ST SESSION

# H. R. 3210

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2013

Received

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## AN ACT

Making continuing appropriations for military pay in the  
event of a Government shutdown.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Pay Our Military Act”.

**3 SEC. 2. CONTINUING APPROPRIATIONS FOR MEMBERS OF  
4 THE ARMED FORCES.**

5 (a) IN GENERAL.—There are hereby appropriated for  
6 fiscal year 2014, out of any money in the Treasury not  
7 otherwise appropriated, for any period during which in-  
8 terim or full-year appropriations for fiscal year 2014 are  
9 not in effect—

10 (1) such sums as are necessary to provide pay  
11 and allowances to members of the Armed Forces (as  
12 defined in section 101(a)(4) of title 10, United  
13 States Code), including reserve components thereof,  
14 who perform active service during such period;

15 (2) such sums as are necessary to provide pay  
16 and allowances to the civilian personnel of the De-  
17 partment of Defense (and the Department of Home-  
18 land Security in the case of the Coast Guard) whom  
19 the Secretary concerned determines are providing  
20 support to members of the Armed Forces described  
21 in paragraph (1); and

22 (3) such sums as are necessary to provide pay  
23 and allowances to contractors of the Department of  
24 Defense (and the Department of Homeland Security  
25 in the case of the Coast Guard) whom the Secretary  
26 concerned determines are providing support to mem-

1       bers of the Armed Forces described in paragraph  
2       (1).

3 (b) SECRETARY CONCERNED DEFINED.—In this sec-  
4 tion, the term “Secretary concerned” means—

## 9 SEC. 3. TERMINATION.

10        Appropriations and funds made available and author-  
11         ity granted pursuant to this Act shall be available until  
12         whichever of the following first occurs: (1) the enactment  
13         into law of an appropriation (including a continuing ap-  
14         propriation) for any purpose for which amounts are made  
15         available in section 2; (2) the enactment into law of the  
16         applicable regular or continuing appropriations resolution  
17         or other Act without any appropriation for such purpose;  
18         or (3) January 1, 2015.

Passed the House of Representatives September 29  
(legislative day September 28), 2013.

Attest: KAREN L. HAAS,  
*Clerk.*

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ROBERT L. SMITHSON, JR., STAFF DIRECTOR

## COMMITTEE ON ARMED SERVICES

### U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED THIRTEENTH CONGRESS

October 1, 2013

The Honorable Chuck Hagel  
 Secretary of Defense  
 1000 Defense Pentagon  
 Washington, DC 20301-1000

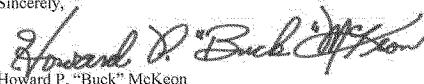
Dear Mr. Secretary:

I share the concerns you've expressed about the seriousness of the lapse in appropriations and the additional negative impacts on military readiness associated with a significant furlough of defense civilian workforce. In an effort to mitigate these harmful effects, the Congress reached unanimous agreement that members of our Armed Forces, as well as the civilians and contractors who provide support to the Armed Forces, should continue to receive pay and allowances. As you know, this legislation, H.R. 3210, the Pay Our Military Act, sponsored by Representative Mike Coffman (R-CO), was signed into law last night. With the enactment of this law, active duty uniformed personnel can continue to be paid for their service and most civilian defense workers should remain on the job.

I was heartened to read your statement indicating that it is a priority for your General Counsel to review the legislation, "to see if there's any margin here, or widening in the interpretation of the law of exempt versus non-exempt civilians." I believe the legislation provides you broad latitude and I encourage you to use it. The text does not limit the provision of pay to civilians who were previously categorized by the Administration as "exempt" or "essential" for the purposes of Department of Defense operations in the event of a government shutdown. Therefore, I strongly encourage you to use the authority Congress has given you to keep national security running, rather than keeping defense civilians at home when they are authorized to work. Likewise, as your General Counsel reviews the legislation, I request additional information regarding the provision of pay and allowances to members of the military Reserves and National Guard.

I look forward to an update on the Administration's interpretation of H.R. 3210 later today. I know you would agree with me that this is no time to use national security or our national security workforce as a political pawn.

Sincerely,

  
 Howard P. "Buck" McKeon  
 Chairman

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## COMMITTEE ON ARMED SERVICES

### U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED THIRTEENTH CONGRESS

October 4, 2013

ROBERT C. SIMMONS, JR., STAFF DIRECTOR

The Honorable Chuck Hagel  
 Secretary of Defense  
 1000 Defense Pentagon  
 Washington, DC 20301-1000

Dear Secretary Hagel:

In my letter to you earlier this week, I expressed my deep concern about the negative impacts on military readiness associated with the significant furlough of the defense civilian workforce, and I encouraged you to use the broad authority the Congress has provided in H.R. 3210, the Pay Our Military Act, to ensure that civilian personnel supporting our Armed Forces are allowed to perform their mission. While I fully recognize that you have made a legal review of the law a top priority, I continue to hear of urgent and critical problems that could be mitigated were H.R. 3210 to be implemented consistent with congressional intent.

A variety of individuals and companies in the defense industrial base have reached out to both you and members of Congress, alerting us to the fact that continued furlough of the workforce of the Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA) will slow delivery of critical items needed to support our troops in Afghanistan and around the world, will summarily halt many defense manufacturing production lines, and will have long-term, costly consequences for the taxpayers and the health of our defense industrial base.

I strongly urge you, once again, to use the flexibility you have been provided by this Congress to immediately allow personnel at DCMA and DCAA to return to their jobs in order to minimize disruption of the production of military hardware being supplied to our Armed Forces.

Sincerely,

Howard P. "Buck" McKeon  
 Chairman

HPM:jbs



**SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000**

OCT 5 2013

MEMORANDUM FOR THE DEPUTY SECRETARY OF DEFENSE  
 SECRETARIES OF THE MILITARY DEPARTMENTS  
 CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
 UNDER SECRETARIES OF DEFENSE  
 DEPUTY CHIEF MANAGEMENT OFFICER  
 COMMANDERS OF THE COMBATANT COMMANDS  
 CHIEF, NATIONAL GUARD BUREAU  
 ASSISTANT SECRETARIES OF DEFENSE  
 GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
 DIRECTOR, OPERATIONAL TEST AND EVALUATION  
 DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION  
 INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
 ASSISTANTS TO THE SECRETARY OF DEFENSE  
 DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
 DIRECTOR, ADMINISTRATION AND MANAGEMENT  
 DIRECTOR, NET ASSESSMENT  
 DIRECTORS OF THE DEFENSE AGENCIES  
 DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Guidance for Implementation of Pay Our Military Act

Appropriations provided under the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) expired at midnight on Monday, September 30, 2013. Hours before that occurred, the Congress passed and the President signed the Pay Our Military Act. That Act provides appropriations for specified purposes while interim or full-year appropriations for fiscal year 2014 are not in effect, as is currently the case.

First, the Act appropriated such sums as are necessary to provide pay and allowances to members of the Armed Forces, "including reserve components thereof, who perform active service during such period [.]". This provision provides the Department with the funds necessary to pay our military members (including Reserve Component members) on active duty or full-time National Guard duty under Title 32, U.S. Code.

Second, the Act appropriated such sums as are necessary to provide pay and allowances to contractors of DoD who the Secretary determines are providing support to members of the Armed Forces in active service. The Department's lawyers are analyzing what authority is provided by this provision.

Third, the Act appropriated such sums as are necessary to provide pay and allowances to the civilian personnel of the Department of Defense "whom the Secretary ... determines are providing



support to members of the Armed Forces" performing active service during such period. The term "pay and allowances" includes annual leave and sick leave.

This Memorandum provides instructions for identifying those civilian personnel within the Department who "are providing support to members of the Armed Forces" within the meaning of the Act. The responsibility for determining which employees fall within the scope of this statute resides with the Military Department Secretaries and Heads of other DoD Components, who may delegate this authority in writing. This guidance must be used in identifying these employees. The guidance does not identify every activity performed by DoD's large civilian workforce, but rather it provides overarching direction and general principles for making these determinations. It should be applied prudently, and in a manner that promotes consistency across the Department.

The Department of Defense consulted closely with the Department of Justice, which expressed its view that the law does not permit a blanket recall of all civilians. Under our current reading of the law, the standard of "support to members of the Armed Forces" requires a focus on those employees whose responsibilities contribute to the morale, well-being, capabilities, and readiness of covered military members during the lapse of appropriations. I have determined that this standard includes all those who are performing activities deemed "excepted" pursuant to the "CONTINGENCY PLAN GUIDANCE FOR CONTINUATION OF ESSENTIAL OPERATIONS IN THE ABSENCE OF AVAILABLE APPROPRIATIONS, SEPTEMBER 2013" because these support activities are felt directly by covered members of the Armed Forces. I want to make it clear that every DoD employee makes an essential contribution to the Department's ability to carry out its mission of defending the Nation. However, under this Act, we must determine who provides support to the *members* of the Armed Forces in active service, in a way that respects Congress's specific appropriation.

There are two distinct categories of civilian employees who fall within the scope of this statutory provision, in addition to those performing excepted activities. The first category includes those employees whose responsibilities provide support to service members performing active service and their families on an ongoing basis. The second category consists of those employees whose responsibilities contribute to sustaining capabilities and Force Readiness and which, if interrupted by the lapse in appropriations, will impact service members' ability to conduct assigned missions in the future. To fall within this second category, there must be a causal connection between the failure to perform the activity during the duration of an appropriations lapse and a negative impact on military members in the future. In other words, if the activity is not performed over the duration of an appropriations lapse, would it be possible to identify a negative impact that will be felt by military members at some time in the future? In undertaking this analysis, it should be assumed that regular appropriations will be restored within the near term.

Examples of activities that provide support to service members on an ongoing basis are:

- i) Health Care Activities and Providers;
- ii) SAPRO, Behavioral Health, and Suicide Prevention Programs;
- iii) Transition Assistance Programs for Military Members in active service;
- iv) Family Support Programs and Activities;

- v) Activities related to the repair and maintenance of weapons systems and platforms at the Operational and Intermediate level;
  - vi) Training Activities associated with military readiness;
  - vii) Supply Chain Management activities in support of near term Force Readiness;
  - viii) Human Resource Activities associated with organizing, equipping, manning and training functions;
  - ix) Installation Support and Facilities maintenance;
  - x) Commissary operations;
  - xi) Payroll activities;
  - xii) The provision of guidance or advice to military members when such guidance or advice is necessary for the military members to execute their functions (e.g., legal advice); and
  - xiii) Necessary support for all activities listed above, including legal, human resources, engineering, and administrative support.

Examples of activities that contribute to capabilities and sustaining force readiness and that, if interrupted, would affect service members' ability to conduct assigned missions in the future include:

- i) Acquisition Program oversight and management (including inspections and acceptance), financial management, contract, logistics, and engineering activities, which support long term readiness;
- ii) Activities related to the repair and maintenance of weapons systems and platforms at the Depot level;
- iii) Supply chain management activities in support of long-term force readiness;
- iv) Intelligence functions;
- v) Information Technology functions; and
- vi) Necessary support for all activities listed above determined to be within the scope of the Act, including legal, human resources, engineering, and administrative support.

Employees performing these activities are within the scope of the Act only if a delay in the performance of these activities over the duration of a lapse in appropriations would have a negative impact on members of the Armed Forces in the future. Delays in the availability of new or repaired equipment would be one such impact.

Those employees of the Department who do not fall within the scope of the Act (unless they have been determined to be "excepted" and unless engaged in activities that support service members) include:

- i) CIO functions;
- ii) DCMO functions, at the OSD and Component level;
- iii) Legislative Affairs and Public Affairs functions not previously excepted or required in support of internal communications to members of the Armed Forces in active service;
- iv) Auditor and related functions, not previously excepted, and DFAS functions that otherwise would not be determined to be "excepted" upon exhaustion of its working capital fund budgetary resources, and not required to process payrolls;

- v) Work done in support of non-DoD activities and Agencies (except the U.S. Coast Guard); and
- vi) Civil works functions of the Department of Army.

As I stated above, all DoD employees perform work that is critical to the long-term strength of our Armed Forces, and our Nation. I fervently hope that the time will be short until I can recall all employees of the Department of Defense back to the vital work that they do helping to defend this Nation and secure our future. I will continue to explore all possibilities to this end. Those falling outside the scope of the Act include men and women who have devoted their lives to service of this country, and whose work on our behalf and on behalf of the Nation is enormously valuable and critical to the maintenance of our military superiority over the long term.

The Act provides appropriations for personnel; it does not provide appropriations for equipment, supplies, materiel, and all the other things that the Department needs to keep operating efficiently. While the Act permits the Department to bring many of its civilian employees back to work, and to pay them, if the lapse of appropriations continues, many of these workers will cease to be able to do their jobs. Critical parts, or supplies, will run out, and there will be limited authority for the Department to purchase more. If there comes a time that workers are unable to do their work I will be forced once again to send them home.

Within the Office of the Secretary of Defense, the Under Secretary of Defense (Comptroller) will take the lead in overseeing the implementation of this guidance, assisted by other offices as necessary. Thank you all for your strong leadership at a very difficult time. The President, the country and I are all grateful for and depend on your leadership, courage, and commitment to our troops, their families and our country.

*Thank you!*

*Chuck Hagel*

cc:  
Director of National Intelligence




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## REFERENCE GUIDE

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### Pay and Leave During the Fiscal Year 2014 Shutdown Furlough

Pay and leave provisions for Department of Defense civilian employees during the Fiscal Year 2014 shutdown furlough will vary by individual, from those originally exempt or excepted, those recalled under the provisions of the Pay Our Military Act (POMA), and those remaining on furlough.

**Exempt from Furlough:**

Department of Defense (DoD) employees who are exempt from the shutdown furlough (e.g., Non-appropriated Fund employees) will receive their regular pay and allowances since they are not affected by the lapse in appropriations. Exempt employees may also take annual and sick leave during the furlough period; normal Federal holiday rules apply for Columbus Day.

**Excepted from Furlough:**

DoD employees originally subject to, but excepted from, the shutdown furlough will receive their regular pay and allowances on time via the authority and appropriation in the "Pay Our Military Act" (POMA). These employees will receive a normal paycheck for the pay period that includes October 1-5. These employees may now also take annual and sick leave; normal Federal holiday rules apply for Columbus Day.

**Employees Recalled under POMA:**

DoD employees furloughed on October 1, 2013, then recalled to work based on the POMA, effective October 6, 2013, will receive their regular pay and allowances through September 30, as they were affected by the lapse in appropriation and were furloughed from October 1-5. Employees will receive a partial paycheck for the pay period that includes October 1-5. They will receive their regular pay and allowances for subsequent pay periods via the authority and appropriation in POMA. Until and unless Congress passes legislation to restore their pay and allowances for October 1-5, AND there is a 2014 appropriation for the Department, these employees will not receive pay or allowances for the days upon which they were furloughed. These employees will be paid for the time they spent conducting orderly shutdown activities on October 1, but they will not receive that pay until there is a 2014 appropriation for the Department by which they may be paid. Employees recalled under POMA may take annual and sick leave; normal Federal holiday rules apply for Columbus Day.



**Employees Recalled under POMA (continued):**

Furlough affects leave accrual. Most employees already have taken six furlough days (48 hours); when they reach a total of 10 furlough days or 80 hours (on/about 4 October), they will lose the sick and annual leave they would have earned for the pay period. Once an employee reaches 80 hours of non-pay time during a calendar year, no leave is accrued during the pay period that threshold is reached. A new 80-hour threshold begins the following pay period, and employees will again lose leave in each pay period in which the employee reaches 80 hours in a non-pay status. If Congress restores pay to furloughed employees, any lost leave will also be restored.

**Furloughed Employees:**

Employees furloughed on October 1, 2013, and not recalled to work, will receive their regular pay and allowances for the hours worked through September 30, 2013. These employees will receive a partial paycheck for the pay period that includes October 1-5. They will remain in a non-pay, non-duty status until recalled to duty; if they are in a non-pay and non-duty status on the days before and after Columbus Day, they will not receive pay for the holiday. Congress must pass legislation to restore their pay and allowances for all days spent in a furlough status before any such employee may be placed in a “pay status.” If such legislation is passed, these employees will be paid for the time they spent conducting orderly shutdown activities on October 1, but they will not receive that pay until there is a 2014 appropriation for the Department by which they may be paid; they will receive pay for the Columbus Day holiday at that time.

Furlough affects leave accrual. Most employees already have taken six furlough days (48 hours); when they reach a total of 10 furlough days or 80 hours (on/about 4 October), they will lose the sick and annual leave they would have earned for the pay period. Once an employee reaches 80 hours of non-pay time during a calendar year, no leave is accrued during the pay period that threshold is reached. A new 80-hour threshold begins the following pay period and employees will again lose leave in each pay period in which the employee reaches 80 hours in a non-pay status. If Congress restores pay to furloughed employees, any lost leave will also be restored.



# GENERAL SERVICES ADMINISTRATION

2013

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UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON DC 20301-1100



The Honorable Joe Wilson  
Chairman  
Military Personnel Subcommittee  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

NOV 4 2013

Dear Mr. Chairman:

I am responding on behalf of Secretary Hagel to your letter dated October 4, 2013, regarding pay and allowances for members of the Armed Forces in light of enactment of the Pay Our Military Act.

The summary of pays and allowances attached to your letter is a general list of items comprising the compensation and benefits provided to members of the Armed Forces and their dependents. It thus includes more than "pay and allowances" for members of the Armed Forces. For example, it lists benefits such as non-mandatory participation in Servicemembers' Group Life Insurance; gratuities, such as the Death Gratuity; and items paid by other Federal agencies, such as Dependency and Indemnity Compensation.

To fully address your request, the Department has prepared a list with all of the items you provided and also included other items currently constituting "pay and allowances" for members of the Armed Forces under titles 10 and 37, United States Code. Those items are set forth in the enclosed table, which also reflects the Department's analysis as to the extent to which each item would have been payable, if at all, under the Pay Our Military Act.

In conducting this analysis, the Department consulted with the Department of Justice and the Office of Management and Budget, and applied the express terms of the statute. With respect to military personnel, the statute appropriated such sums as were necessary "to provide pay and allowances to members of the Armed Forces (as defined in section 101(a)(4) of title 10 United States Code), including Reserve Components thereof, who perform active service during such period". The Department first identified those items that constitute "pay and allowances" for the Armed Forces, which are generally set out in titles 10 and 37, United States Code. Next, the Department determined which pay and allowances were payable "to" members of the Armed Forces, in order to meet the statute's terms. Finally, the Department applied the language limiting such payments to only those Servicemembers who performed "active service" during the period when interim or full-year appropriations for Fiscal Year 2014 were not in effect. The term "active service" is defined in both titles 10 and 37, United States Code, and it excludes inactive duty.

The Department of Defense appreciates the financial relief afforded to most of our Servicemembers by the Pay Our Military Act. However, it is unfortunate that the Act was drafted in a manner that precluded the Department from fully compensating all members of the Armed Forces and the survivors of our fallen warriors during the lapse in appropriations, and that the Department was not afforded an opportunity to review the Act and recommend revisions before it was introduced.

We are appreciative that the Congress passed, and the President signed, the Department of Defense Survivor Benefits Continuing Appropriations Resolution, 2014 (Public Law 113-44) on October 10, 2013, so that the Department could pay death gratuities and provide reimbursement for certain death-related expenses to survivors of our fallen warriors. The Department began making payments to the designated beneficiaries under the authority of the new statute on October 11, 2013.

While we are grateful for the current continuing resolution, we urge the Congress to provide regular appropriations for Fiscal Year 2014 so that the Department can fully execute its mission without undue interruptions or constraints. Furthermore, we remain hopeful that the Congress will pass a balanced deficit reduction plan that the President can sign and that ends sequestration.

Sincerely,



Robert F. Hale

Enclosure:  
As stated

cc:  
The Honorable Adam Smith  
Ranking Member

## Summary of Military Pays, Allowances, and Other Monetary Benefits

Title	U.S.C. Title	U.S.C. Section(s)	Pay Active Service	Pay Inactive Duty	Allowance	Military Pay or Allowance Under POMA
Acceleration subject duty pay	37	301(a)(6)	X	X		Y <sup>1</sup>
Assignment incentive pay	37	307a	X			Y
Aviation career continuation pay	37	301b	X			Y
Aviation career incentive pay	37	301a	X	X		Y <sup>1</sup>
AWACS flight pay	37	301(a)(13)	X	X		Y <sup>1</sup>
Basic allowance for housing (BAH)	37	403			X	Y
Basic allowance for subsistence	37	402			X	Y
Basic pay	37	204	X			Y
Career sea duty	37	305a	X			Y
Career sea pay premium	37	305a(c)	X			Y
Chemical munitions exposure pay	37	301(a)(10)	X	X		Y <sup>1</sup>
Clothing basic replacement allowance	37	418			X	Y <sup>1</sup>
Combat pay (also known as hostile fire pay or imminent danger pay)	37	310	X			Y <sup>1</sup>
Combat-related rehabilitation pay	37	328	X			Y <sup>1</sup>
CONUS COLA	37	403b			X	Y
Critical skills retention bonus	37	323/355	X			Y
Dangerous organisms exposure pay	37	301(a)(9)	X	X		Y <sup>1</sup>
Death gratuity	10	1475				NPA
Deceleration subject duty pay	37	301(a)(6)	X	X		Y <sup>1</sup>
Demolition duty pay	37	301(a)(4)	X	X		Y <sup>1</sup>
Dental officers special pays						
• Variable special pay	37	302b/335(b)	X			Y
• Additional special pay	37	302b(a)(4)	X			Y
• Board-certification pay	37	302b(a)(5)	X			Y
• Accession bonus	37	302b	X			Y
• Critical wartime speciality accession bonus	37	302l	X			Y
• Retention bonus (multiyear)	37	301e	X			Y
Dependency and indemnity compensation (DIC)	38	1310-1318				NPA
Disability retired pay	10	1401				N
Dislocation and departure allowance	37	477 and 475a			X	Y <sup>1</sup>
Diving duty pay	37	304	X	X		Y <sup>1</sup>
Engineering and scientific career continuation pay	37	315	X			Y
Enlistment bonus	37	309	X			Y
Enlistment referral bonus	10	3252/1030	X	X		EXP
Experimental stress duty pays	37	301(a)(7)	X	X		Y <sup>1</sup>
Family separation allowance	37	403(d)			X	Y
	37	427			X	Y
Flight deck duty pay	37	301(a)(8)	X	X		Y <sup>1</sup>
Flight pay (aviation career continuation pay)	37	301b	X			Y
Flight pay (aviation career incentive pay)	37	301a	X	X		Y <sup>1</sup>
Flight pay (AWACS flight pay)	37	301(a)(13)	X	X		Y <sup>1</sup>
Flight pay (crew member)	37	301(a)(1)	X	X		Y <sup>1</sup>
Flight pay (non-crew member)	37	301(a)(2)	X	X		Y <sup>1</sup>
Foreign language proficiency bonus	37	316	X	X		Y <sup>1</sup>
Glider duty pay	37	301(a)	X			EXP
HALO parachute duty pay	37	301(a)(3)	X	X		Y <sup>1</sup>
Hardship duty pay	37	305	X			Y
Hazardous duty incentive pay for air weapons controller crew members (AWACS flight pay)	37	301(a)(13)	X	X		Y <sup>1</sup>
High-deployment allowance	37	436			X	EXP
High pressure chamber duty pay	37	301(a)(5)	X	X		Y <sup>1</sup>
Hostile fire pay (also known as combat pay or imminent danger pay)	37	310	X			Y
Inactive-duty training pay (also known as "drill pay")	37	206			X	N
Leprosy duty pay	37	301(a)	X			EXP
Low pressure chamber duty pay	37	301(a)(5)	X	X		Y <sup>1</sup>
Medical officers special pays	37					

Enclosure

Title	U.S.C. Title	U.S.C. Section(s)	Pay Active Service	Pay Inactive Duty	Allowance	Military Pay or Allowance Under POMA
• Variable special pay	37	302(a)(2)&(3)	X			Y
• Additional special pay	37	302(a)(4)	X			Y
• Board-certification pay	37	302(a)(5)	X			Y
• Incentive special pay	37	302(b)	X			Y
• Retention bonus (multiyear)	37	301d	X			Y
• Critical wartime specialties accession bonus	37	302k	X			Y
Military Occupational Specialty (MOS) conversion bonus	37	326	X	X		Y <sup>1</sup>
Nonphysician health-care providers special pay	37	302c	X			Y
Nuclear career accession bonus	37	312b	X			Y
Nuclear career annual incentive bonus	37	312c	X			Y
Nuclear officer continuation pay	37	312	X			Y
Nuclear-trained and -qualified enlisted members	37	312a/308	X			Y
Nurses special pays	37					
• Accession bonus for registered nurses	37	302d	X			Y
• Incentive special pay for certified registered nurse anesthetists and nurses serving in other critical nursing specialties	37	302e	X			Y
• Special pay for board-certified nurses with post-baccalaureate degrees who are health-care providers	37	302c(d)	X			Y
• Critical skills accession bonus for persons enrolled in senior reserve officers' training corps obtaining nursing degrees	10	2130a		X		N
Operational submersible duty pay	37	301c	X	X		Y <sup>1</sup>
Optometrists special pay	37					
• Regular special pay	37	302a(a)	X			Y
• Retention special pay	37	302a(b)	X			Y
Overseas cost of living adjustment	37	405/475	X			Y
Overseas duty extension pay	37	314	X			Y
Parachute duty pay	37	301(a)(3)	X	X		Y <sup>1</sup>
Pay and allowance continuation	37	372	X			Y <sup>1</sup>
Personal exposure pay (toxic pesticides, etc.)	37	301(a)(9)	X	X		Y <sup>1</sup>
Personal money allowance	37	413/414			X	Y
Pharmacists retention special pay	37	302i	X			Y
Psychologists special pays	37					
• Special pay	37	302c	X			Y
• Retention bonus (multiyear)	37	302c-1(b)	X			Y
• Accession bonus	37	302c-1(a)	X			Y
Responsibility pay	37	306	X			Y
Retired and retainer pay (nondisability)	10	1401				N
Selective reenlistment bonus (SRB)	37	308	X			Y
Involuntary separation pay (non-disability)	10	1174	X			Y
Servicemembers' Group Life Insurance (SGLI)	38	1970				NPA
Disability severance pay	10	1212	X			Y <sup>1</sup>
Special duty assignment pay (SDAP)	37	307	X			Y
Special position allowance for certain Navy personnel	37	414(b)			X	Y
Special survivor indemnity allowance	10	1450(m)				NPA
Submarine duty incentive pay	37	301c	X	X		Y
Survivor Benefit Plan (SBP)	10	1447				NPA
Thermal experiment subject pay	37	301(a)(7)	X	X		Y <sup>1</sup>
Toxic fuels and propellants exposure pay	37	301(a)(10)	X	X		Y <sup>1</sup>
Toxic pesticides exposure pay	37	301(a)(9)	X	X		Y <sup>1</sup>
Transfer between armed forces (incentive bonus)	37	327	X			Y
Traumatic injury coverage (under SGLI)	38	1980A				NPA
Veterinarians special pay	37	303(a)	X			Y

Enclosure

Title	U.S.C. Title	U.S.C. Section(s)	Pay Active Service	Pay Inactive Duty	Allowance	Military Pay or Allowance Under POMA
<b>Items not on the Incoming list</b>						
Allowance for Civilian Clothing for discharged members	10	1047			X	Y <sup>1</sup>
Bonus for reenlistment, enlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve	37	308h		X		N
Cadet/Midshipman Pay	37	203	X			Y
Career Enlisted Flyer Pay	37	320	X	X		Y <sup>1</sup>
Career Status Bonus (CSB)	37	354	X			Y
Civilian Income Replacement for Involuntarily Mobilized Reserves	37	910	X			Y
Consecutive Overseas Tour (COT) Leave Travel	37	481b			X	Y <sup>1&amp;2</sup>
Convalescent Leave Travel	37	481a			X	Y <sup>1&amp;2</sup>
Dependent Student Travel	37	489-490			X	Y <sup>1&amp;2</sup>
Dependent Travel if Member Dead, Injured, Ill or Absent	37	484			X	Y <sup>1</sup>
Designated Individuals Visit Wounded Member	37	481h			X	Y <sup>1&amp;2</sup>
Designated High-Priority Unit Pay	37	308d		X		Y <sup>1</sup>
Emergency Leave Travel (for member or dependent from PDS)	37	481d			X	Y <sup>1&amp;2</sup>
Emergency Leave Travel (for member from and to TDY location)	37	481e			X	Y <sup>1&amp;2</sup>
Enlistment Bonus (Ready Reserve)	37	308g		X		Y <sup>1</sup>
Enlistment Bonus (Selected Reserve)	37	308c		X		Y <sup>1</sup>
Escort of Dependent Unable to Travel Alone	10	1036			X	Y <sup>1</sup>
Evacuation Allowances	37	475a			X	Y <sup>1&amp;2</sup>
Family Members Travel Incident to Repatriation of Members Held Captive	37	481j			X	Y <sup>1&amp;2</sup>
Foreign language proficiency pay (ROTC Students Not On Active Duty)	37	316a		X		N
Funded Environmental & Morale Leave Travel	37	481c			X	Y <sup>1&amp;2</sup>
Funded Rest & Recuperation Leave Travel	37	481c			X	Y <sup>1&amp;2</sup>
Funeral Honors Duty (Inactive Duty)	37	206		X		N
Funeral Honors Duty (Inactive Duty)	37	495		X		N
Funeral Honors Duty (Inactive Duty)	10	12503		X		N
Health Professions Scholarship Program (HPSP)	10	2121 & 2127		X		Y <sup>1</sup>
Health Professions Scholarship Program Accession Bonus	10	2128		X		N
Health Professions Stipend Program for Reserve Service	10	16201		X		N
Incapacitation Pay	37	204(g)		X		Y <sup>1</sup>
Inclusion of Accrued Leave in Settlement of Unpaid Pay and Allowances on Behalf of Deceased	37	501	X		X	Y <sup>1</sup>
Judge Advocate Continuation Pay	37	321	X			Y
Local Travel	37	478			X	Y <sup>1&amp;2</sup>
Non-Medical Attendant (NMA) for Seriously Wounded Member	37	481k			X	Y <sup>1&amp;2</sup>
OCONUS Dependent Medical Care Travel	10	1040			X	Y <sup>1&amp;2</sup>
OEF SGLI Premium Allowance	37	437			X	Y
Partial Dislocation Allowance	37	477(d)			X	Y
Payment for Unused Accrued Leave	37	501	X			Y
Payments to Missing Persons	37	552	X		X	Y <sup>1</sup>
PCS Household Goods (HHG) Shipment	37	476	X		X	Y <sup>1&amp;2</sup>
PCS Travel & Transportation Allowances - Dependents	37	476	X		X	Y <sup>1&amp;2</sup>
PCS Travel & Transportation Allowances - Member	37	474	X		X	Y <sup>1&amp;2</sup>
POV Shipment	10	2634			X	Y <sup>1&amp;2</sup>
Prior Service Enlistment Bonus (Selected Reserve)	37	308i		X		Y <sup>1</sup>
Ready Reserve Muster Duty Allowance	37	433			X	N
Ready Reserve Participation in Electronic Screening Allowance	37	433a			X	N
Recruiter Parking Expenses	37	481i			X	Y <sup>1&amp;2</sup>

Enclosure

Title	U.S.C. Title	U.S.C. Section(s)	Pay Active Service	Pay Inactive Duty	Allowance	Military Pay or Allowance Under POMA
Recruiting Expense Reimbursement	37	488			X	Y <sup>1&amp;2</sup>
Reenlistment Bonus (Selected Reserve)	37	308b		X		Y <sup>1</sup>
ROTC Cadet/Midshipman Subsistence Allowance (Not on Active Duty)	37	209		X		N
Select Reserve Officer Accession and Affiliation Bonus	37	308j		X		Y <sup>1</sup>
Settlement of Unpaid Pay and Allowances on Behalf of Deceased Members	10	2771	X		X	Y <sup>1</sup>
Special Compensation for Assistance with Activities of Daily Living (SCAADL)	37	439			X	Y <sup>1</sup>
Special duty assignment pay (Guard and Reserve)	37	307(d)		X		Y <sup>1</sup>
Special pay: Selected Reserve health care professionals in critically short wartime specialties	37	302g		X		Y <sup>1</sup>
Service as Member of Weapons of Mass Destruction Civil Support Team Special Pay	37	305b	X	X		Y <sup>1</sup>
Special Warfare Officers Retention Bonus	37	318	X			Y
Supplemental Subsistence Allowance	37	402a			X	Y
Surface Warfare Officers Continuation Pay	37	319	X			Y
Basic Allowance for Housing for Surviving Dependents	37	403(l)			X	N
Temporary Duty (TDY)	37	474			X	Y <sup>1&amp;2</sup>
Temporary Early Retirement Authority (TERA) Payments	10	1293 note				N
Temporary Lodging Allowance	37	475			X	Y
Temporary Lodging Expense	37	474a			X	Y
Transportation of Mobile Homes	37	479	X		X	Y <sup>1&amp;2</sup>
Travel & Transportation to Attend Funerals, Dignified Transfer of Remains, or Unit Memorial Services	37	481f			X	N
Travel to Specialty Care over 100 Miles	10	1074i			X	Y <sup>1&amp;2</sup>
Voluntary Separation Pay	10	1175a	X			Y
Visit, Board, Search and Seizure Duty Pay	37	301(a)(11)	X	X		Y <sup>1</sup>
Overseas housing Allowance (OHA)	37	403(c)			X	Y
Duty involving Use of Ski-Equipped Aircraft on the Ground in antarctica or on Polar ice-pack	37	301(a)(12)	X	X		Y <sup>1</sup>
Pharmacy Officer Accession Bonus	37	302j	X			Y
College First Program	10	511		X		Y <sup>1</sup>
Electronic Based Distributed Learning Pay for Inactive Duty	37	206(d)(2)		X		N
Increase in Basic Pay of 25% for enlisted members of the naval service held beyond expiration of enlistment on a vessel in foreign waters	10	5540	X			Y
Benefits for Certain Members Assigned to the Defense intelligence Agency	37	491			X	Y

**NOTES:**

Y<sup>1</sup> = Payable only to members who performed "active service" during the lapse period, thus any pay or allowance associated with inactive duty was not payable. Allowances paid to beneficiaries were deemed to be paid to the member—who still needed to meet the basic criteria—for purposes of implementing POMA. Any entitlements to which a deceased member was entitled prior to death, such as unpaid leave, pay, and allowances, were also deemed payable to the member—who still needed to meet the basic criteria—for purposes of implementing POMA.

Y<sup>2</sup> Only payments to members allowable under POMA(a)(1). Where an allowance could be provided by means of the Government contracting for a service, payments to such contractor were governed by subsection (a)(3) of POMA.

NPA = Not a "pay and allowance", and thus not payable under POMA (but may be payable under other authority).

EXP = The authority is expired/repealed/suspended.

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### U.S. House of Representatives

Washington, DC 20515-6035

ONE HUNDRED THIRTEENTH CONGRESS

October 4, 2013

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 DAVID LEE, MASSACHUSETTS  
 NIKI TSONGAS, MASSACHUSETTS  
 JENNIFER GALTENBERG JOHNSON, MASSACHUSETTS  
 HENRY C. "HANK" JOHNSON, JR., GEORGIA  
 COLLEEN NANAUSUA, HAWAII  
 JAMES R. HERRIN, CALIFORNIA  
 RON BARBER, ARKANSAS  
 ANDRE CARSON, INDIANA  
 DANIEL M. RAY, NEW HAMPSHIRE  
 DANIEL B. MAFIS, NEW YORK  
 DEREK KILMER, WASHINGTON  
 ROB WEXFORD, CONNECTICUT  
 TAMMY DUCKWORTH, ILLINOIS  
 SCOTT H. PETERS, CALIFORNIA  
 WILLIAM L. BROWN, TENNESSEE  
 PETE P. GALLEGOS, TEXAS  
 MARC A. VEASEY, TEXAS

ROBERT L. SIMMONS, II, STAFF DIRECTOR

The Honorable Chuck Hagel  
 Secretary of Defense  
 1000 Defense Pentagon  
 Washington, DC 20301-1000

Dear Secretary Hagel:

As you are well aware, the Pay Our Military Act, H.R. 3210, was signed into law and provides an appropriation for the pay and allowances of members of our Armed Forces, our defense civilians and contractors, who sacrifice so much in the defense of our country.

I know you have made the legal review of the legislation a top priority, but I am very concerned that further delays may interrupt essential pays and allowances. For example, it has come to my attention that the Department of Defense is not currently paying several critical allowances earned by members of the Armed Forces that have made the ultimate sacrifice. These include, the Death Gratuity, which is payable to a designated beneficiary, in a lump sum of \$100,000, for a death on active duty or inactive duty training and Burial Benefits which provide up to \$10,500 to survivors to cover expenses related to the burial of the service member. We cannot in good conscience deny these benefits to the survivors of deceased members.

Attached you will find a summary of pays and allowances taken from the November 2011, Seventh Edition of the Military Background Papers published by the Undersecretary of Defense for Personnel and Readiness. I request that you provide me a summary of which of the pays and allowances on that list that will not be paid and the rationale for non-payment. If there are other pays and allowances not on the attached list, I ask that you identify them in your response with an explanation of whether they will be paid or not.

I look forward to your update on pays and allowances no later than Thursday, October 10, 2013.

Sincerely,



Joe Wilson  
 Chairman  
 Military Personnel Subcommittee

AGW:dg



OSD011875-13

### Pays and Allowances Summary

Title	Compensation Range	Initial Date	Last Change
Acceleration subject duty pay	\$150 per month	1955	1998
Assignment incentive pay	Up to \$3,000 monthly; varies by service and assignment.	2003	2008
Aviation career continuation pay	Up to \$25,000 per year if officer agrees to remain on active duty to complete 14 years of commissioned service	1980	2004
Aviation career incentive pay	\$125 to \$840 per month	1974	1999
AWACS flight pay	\$150 to \$350 per month	1981	1997
Basic allowance for housing (BAH)	Formula provided in 37 USC §403(b)	1878	2009
Basic allowance for subsistence	Formulas provided in 37 USC §402	1808	2009 <sup>1</sup>
Basic pay	\$1,294.50 to \$14,750.10 per month	1790	2009
Career sea duty	Maximum \$750 per month	1835	2001
Career sea pay premium	Up to \$350 per month	1980	2001
Chemical munitions exposure pay	\$150 per month	1981	1998
Clothing basic replacement allowance	\$266.40 to \$460.80 per year; varies by service and gender	1949	2009
Combat pay (also known as hostile fire pay or imminent danger pay)	Permanent increase for imminent danger special pay to \$225 and family separation allowance to \$250	1952	2005
Combat-related rehabilitation pay	Replaced by pay and allowance continuation	2006	2008
CONUS COLA	Varies with duty station and location of dependents	1995	2009
Critical skills retention bonus	Maximum total of \$200,000 (\$100,000 for reserves on active duty)	2001	2006
Dangerous organisms exposure pay	\$150 per month	1981	1998
Death gratuity	\$100,000	1908	2006
Deceleration subject duty pay	\$150 per month	1955	1998
Demolition duty pay	\$150 per month	1949	1998
Dental officers special pays		1967	2008
• Variable special pay	\$3,000 to \$12,000 per year	1985	1998
• Additional special pay	\$10,000 to \$15,000 per year	1985	2008
• Board-certification pay	\$2,500 to \$6,000 per year	1985	1997
• Accession bonus	Up to \$150,000	1997	2007
• Critical skills accession bonus	Up to \$400,000	2007	2007
• Retention bonus (multiyear)	Up to \$50,000 per year	1998	2003
Dependency and indemnity compensation	\$967 to \$2,211 per month for surviving spouse plus additional amounts for dependent children	1956	2003
Disability retired pay	Up to 75% of basic pay at time of retirement for disability	1861	2008
Dislocation and departure allowance	2 1/2 months' BAH	1955	2009
Diving duty pay	Up to \$240 (officers) and \$340 (enlisted members) per month	1886	2000
Engineering and scientific career continuation pay	Up to \$3,000 per year for each year of an extension agreement	1981	1986
Enlistment bonus	Up to \$40,000	1791	2006
Enlistment referral bonus	Up to \$2,000	2006	2008
Experimental stress duty pays	\$150 per month	1955	1998
Family separation allowance	FSA I: 1 month's BAH (without dependents rate) FSA II: \$250 per month	1963	2009

### Pays and Allowances Summary

Title	Compensation Range	Initial Date	Last Change
Flight deck duty pay	\$150 per month	1965	1998
Flight pay (aviation career continuation pay)	Up to \$25,000 per year if officer agrees to remain on active duty to complete 14 years of commissioned service	1980	2004
Flight pay (aviation career incentive pay)	\$125 to \$840 per month	1974	1999
Flight pay (AWACS flight pay)	\$150 to \$350 per month	1981	1997
Flight pay (crew member)	\$150 to \$250 per month	1913	1999
Flight pay (non-crew member)	\$150 per month	1934	1998
Foreign language proficiency pay	Up to \$12,000 per year	1986	2009
Glider duty pay	Authority terminated 1984	1944	1984
HALO parachute duty pay	\$225 per month	1985	1998
Hardship duty pay	Up to \$1,500 per month	1900	2008
Hazardous duty incentive pay for air weapons controller crew members (AWACS flight pay)	\$150 to \$350 per month	1981	1997
High-deployment allowance	\$1,000 per month	2000	2004
High pressure chamber duty pay	\$150 per month	1983	1998
Hostile fire pay (also known as combat pay or imminent danger pay)	\$225 per month	1952	2005
Inactive-duty training pay	1/30 <sup>th</sup> of a month's basic pay per unit training	1916	1996
Leprosy duty pay	Authority terminated 1984	1949	1984
Low pressure chamber duty pay	\$150 per month	1983	1998
Medical officers special pays			
▪ Variable special pay	\$1,200 to \$12,000 per year	1947	1990
▪ Additional special pay	\$15,000 per year	1947	1990
▪ Board-certification pay	\$2,500 to \$6,000 per year	1947	1990
▪ Incentive special pay	Up to \$75,000 per year	1947	2008
▪ Retention bonus (multiyear)	Up to \$75,000 for each year of a 4-year active-duty commitment	1989	2008
▪ Critical skills accession bonus	Up to \$400,000	2005	2007
MOS conversion bonus	Maximum lump sum not to exceed \$4,000 (\$2,000 for reserves)	2004	2009
Nonphysician health-care providers special pay	Up to \$5,000 per year	1991	1996
Nuclear career accession bonus	Up to \$30,000 per year	1976	2007
Nuclear career annual incentive bonus	\$14,000 to \$22,000 per year	1976	2006
Nuclear officer continuation pay	Up to \$30,000 per year	1969	2009
Nuclear-trained and -qualified enlisted members	Up to \$15,000 for a reenlistment	1972	1972
Nurses special pays			
▪ Accession bonus for registered nurses	One-time payment up to \$30,000	1989	2005
▪ Incentive special pay for certified registered nurse anesthetists and nurses serving in other critical nursing specialties	Up to \$50,000 per year	1989	2003

### Pays and Allowances Summary

Title	Compensation Range	Initial Date	Last Change
• Special pay for board-certified nurses with post-baccalaureate degrees who are health-care providers	Up to \$5,000 per year	1996	1996
• Critical skills accession bonus for persons enrolled in senior reserve officers' training corps obtaining nursing degrees	Up to \$5,000	2006	2006
Operational submersible duty pay	\$75 to \$835 per month	1960	2003
Optometrists special pay		1971	2003
• Regular special pay	\$100 per month	1971	1980
• Retention special pay	Up to \$15,000 per year	1991	2003
Overseas cost of living adjustment	Varies by country	1942	2009
Overseas duty extension pay	Up to \$80 per month, annual bonus not to exceed \$2,000	1980	1998
Parachute duty pay	\$150 per month (\$225 HALO)	1941	1998
Pay and allowance continuation	All pay and allowances received at time of hospitalization for wound, injury, or illness sustained in a hostile-fire event for up to 12 months	2008	2008
Personal exposure pay (toxic pesticides, etc.)	\$150 per month	1981	1998
Personal money allowance	Up to \$500 to \$4,000 per year for officers (\$2,000 enlisted)	1922	2001
Pharmacists retention special pay	Up to \$15,000 per year	2001	2003
Psychologists special pays		1987	2009
• Special pay	Up to \$5,000 per year	1987	1990
• Retention bonus (incentive)	Up to \$25,000 per year	1987	2009
• Critical skills accession bonus for licensed psychologists	Up to \$400,000	2009	2009
Responsibility pay	\$50 to \$150 per month	1958	1992
Retired and retainer pay (nondisability)	Currently 50% to 75% of basic pay or monthly retired pay base	1861	2000
Selective reenlistment bonus (SRB)	Up to \$90,000	1795	2006
Separation pay (nondisability)	10% of product of years of active service and 12 times terminal monthly basic pay	1800	1994
SGLI (Servicemembers' Group Life Insurance (SGLI)	Up to \$400,000 for survivors	1917	2005
Severance pay (disability)	Up to 2 years' basic pay at time of separation	1949	1994
Special duty assignment pay (formerly, proficiency pay)	Up to \$600 per month	1958	2001
Special position allowance for certain Navy personnel	\$400 to \$5,200 per year	1946	1946
Special survivor indemnity allowance	Up to \$310 per month	2009	2009
Submarine duty incentive pay	\$75 to \$835 per month	1901	2003
Survivor Benefit Plan (SBP)	Up to 55% of retired or retainer pay	1953	2009
Thermal experiment subject pay	\$150 per month	1957	1998

**Pays and Allowances Summary**

<b>Title</b>	<b>Compensation Range</b>	<b>Initial Date</b>	<b>Last Change</b>
Toxic fuels and propellants exposure pay	\$150 per month	1981	1998
Toxic pesticides exposure pay	\$150 per month	1981	1998
Transfer between armed forces (incentive bonus)	Up to \$10,000	2006	2007
Traumatic injury coverage (under SGLI)	\$25,000 to \$100,000	2005	2005
Veterinarians special pay	\$100 per month	1953	1980

<sup>1</sup>The formula for officers was established in 1998, that for enlisted members in 2001.



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**WITNESS RESPONSES TO QUESTIONS ASKED DURING  
THE HEARING**

OCTOBER 10, 2013

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### **RESPONSE TO QUESTION SUBMITTED BY MR. WILSON**

Secretary HALE. [The information can be found in the Appendix beginning on page 59.] [See page 21.]

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### **RESPONSE TO QUESTIONS SUBMITTED BY MR. TURNER**

Secretary HALE. The interpretation of the Pay Our Military Act language was made collaboratively within the Department of Justice. That opinion was communicated to the Secretary of Defense and the Department acted upon it accordingly. [See page 25.]

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### **RESPONSES TO QUESTIONS SUBMITTED BY MRS. DAVIS**

Secretary HALE. The Department has reviewed the DOD Survivor Benefits Continuing Appropriations Resolution, 2014 (P.L. 113-44) and believes it provides the necessary appropriations to pay the death gratuities and related benefits for survivors of deceased military service members during this lapse in normal or continuing appropriations. [See page 25.]

Ms. WRIGHT. Both government and employee contributions for health care stop during furlough.

The Defense Finance and Accounting Service (DFAS) tracks the government contributions owed, and when funds become available, those contributions are paid to the health carrier.

The employee's contributions are also tracked by DFAS. When the employee returns to a pay status, collection of the owed premiums are made through salary offsets, which may not exceed more than 15 percent of an employee's disposable pay. In situations where the debt owed is for 4 pay periods or less, or \$50.00 or less, the payroll office may notify the employee by placing a remark on the Leave and Earnings Statement (LES). When the debt extends beyond 4 pay periods, the employee must be provided a written notice of indebtedness and an opportunity to review and arrange to repay the debt. The DFAS debt repayment process is found in the DOD Financial Management Regulation (FMR), Volume 8, Chapter 8. [See page 26.]



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**QUESTIONS SUBMITTED BY MEMBERS POST HEARING**

OCTOBER 10, 2013

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#### **QUESTIONS SUBMITTED BY MS. BORDALLO**

Ms. BORDALLO. As you mentioned, in implementing POMA it is particularly challenging to separate out pay and allowances for contractors from their profit, overhead, material and supplies. Nearly three years ago the Congress directed the Department to use the Army's Contract Manpower Reporting Application to collect direct labor hours and associated costs from all contractors providing services to the Department. This is statutorily required on an annual basis. It is clear that the challenge you face in implementing this provision of POMA would not exist if the Department were compliant with these requirements. What has been the delay and what is the current status of compliance? When does the Department anticipate having this system in place?

Secretary HALE. The Department has made significant progress over the past two years implementing the Army's Contract Manpower Reporting Application to collect direct labor hours and associated costs from contractors. Each of the Military Services and the Defense-wide community has implemented the Enterprise-wide Contractor Manpower Reporting Application (ECMRA). Beginning in November 2012, all new contracts, and modifications to existing contracts for services have language requiring reporting of all contractor labor hours to the ECMRA. The first reporting period based on the November 2012 guidance was originally scheduled to end October 31, 2013, but was extended to December 31, 2013, to accommodate delays associated with the Government shutdown.

As we move forward, we are taking action to consolidate each individual Component version of ECMRA into a single Department-wide ECMRA with a single program manager. The benefits of a single system include the ability to more efficiently consolidate data for the Department, provide consistent reporting support from a single program office and help desk, and reduce the data entry for the contractor community. In addition, performance measures have been developed to ensure that by FY 2018 95% of the Department's purchases for services are reporting direct labor hours and associated costs in ECMRA. This data will be used to prepare the Inventory of Contracts for Services and inform the programming and budget process.

Ms. BORDALLO. You mentioned in your opening remarks that in recent years there have been regular actions taken that undermine civilian morale. With the exception of the pay freeze, these are all choices the Department is guilty of making. The Department unilaterally implemented and has maintained a cap on its civilian workforce since 2010, despite repeated concerns from the Congress that this cap violates multiple statutory provisions. The Department took the unilateral action to release term and temp civilians and implement an across the board hiring freeze this past February in response to the sequester. The Department made the choice to furlough its civilian workforce this summer. And the Department's FY14 budget had projected reductions in the civilian workforce of nearly 5%. That said, what specific actions have you taken, consistent with 10 USC 2330a, to review and reduce contract support services, in many areas continue to grow despite budgetary pressures?

Secretary HALE. Many of the actions the Department was forced to take in FY 2013 were directly as a result of sequestration. We were forced to reduce \$20 billion in the Operation and Maintenance (O&M) accounts that pay our civilian workers. In addition, because our wartime budget was also subject to sequestration, we were forced to realign funding from our base operations to provide our troops at war with every resource they needed. Taken together, these factors led to a shortfall in our O&M accounts of more than \$30 billion.

The Department had to take action to reduce O&M costs. These actions were not limited to the actions we took to reduce civilian labor costs, we also took action to reduce travel costs by curtailing participation in international events, conferences and support to non-DOD special events. Many of the DOD Components also took action to reduce the scope of support for those contract support services that were scheduled to be renewed after the sequester took effect. All of these actions were taken to prevent further degradation to readiness.

The Department remains committed to managing the total force. Section 955 of the FY 2013 NDAA requires the Department to manage reductions to the civilian workforce and contractor workforce in accordance with the reductions to the military workforce. As we build our FY 2015 budget, we will ensure all elements of the total force are considered for reduction in accordance with the force structure reductions and Defense priorities.

### QUESTIONS SUBMITTED BY MS. SHEA-PORTER

Ms. SHEA-PORTER. Comptroller Hale, at a House Armed Services Committee hearing last month, General Odierno echoed the acknowledgement you made before the Senate Defense Appropriations Subcommittee in June that contractors cost significantly more than civilian employees. According to the transcript, you told Senate Defense Appropriators that this was particularly true for functions performed over a long term. With defense dollars so precious, what steps is the Department taking to substitute cheaper civilian employees for contractors for functions performed over a long term? Based on what you said—that contractors are significantly more expensive in such instances—there would obviously be great savings. If steps aren't being taken, why? Is it necessary for the Congress to pass new law?

Secretary HALE. There are already many laws, that direct the Department in how it manages the total force of military, civilians and contracts for services. Specifically, section 808 of the FY 2012 NDAA and section 955 of the FY 2014 NDAA limit what the Department can spend on contracts for services. Compliance with the requirements of section 808 and section 955 are part of the OSD budget review process.

In addition to the actions we take during the programming and budgeting process to limit the amount of funding allocated to contractor services, the Department continues to review each year what the Department actually spent on contractor services as part of the process that develops the annual Inventory of Contracts for Services. We have made significant strides over the past two years to improve our visibility of the labor hours associated our contracts for services. Each of the Military Services and the Defense-wide community has implemented the Enterprise-wide Contractor Manpower Reporting Application (ECMRA). Beginning in November 2012, all new contracts for services have language requiring reporting of all contractor labor hours and associated costs to the ECMRA. The first reporting period based on the November 2012 guidance was originally scheduled to end October 31, 2013, but was extended to December 31, 2013 to accommodate delays associated with the Government shutdown.

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### QUESTIONS SUBMITTED BY MS. DUCKWORTH

Ms. DUCKWORTH. I have heard recent concerns that the non-medical attendant pay (NMA) that is given to the caregivers of the newly injured at Walter Reed may be suspended. I am disturbed by the thought that our caregivers—mothers, fathers, spouses, daughters, sons staying up with and helping our Wounded Warriors recover—will NOT have this critical funding to be able to pay their bills back home. In addition, I've heard that Special Compensation for Assistance with Activities of Daily Living (SCAADL) for Wounded Warriors that are discharged may also be suspended.

This is yet another example of why we need to open our government back up and why a piecemeal approach to fund our government is not working. However, I do not want our service members, much less those that are recovering for the wounds they so honorably incurred serving and protecting us, to suffer because we cannot pass a clean Continuing Resolution.

In Secretary Hagel's memo dated 5 October 2013, he stated that civilian personnel, who provide support to service members in health care activities and providers, as well as family support programs and activities, would be included in H.R. 3210 and thus, be paid. Yet rumors are circulating in the wards of Walter Reed. Secretary Hale, could you please clarify whether or not H.R. 3210 will cover payout of the NMA and SCAADL benefits our Wounded Warriors need?

Secretary HALE. Based on a review of the Pay Our Military Act (P.L. 113-39), the Department of Defense determined that both the travel and transportation allowances for non-medical attendants authorized by 37 U.S.C. 481k and the Special Compensation for Assistance with Activities of Daily Living authorized by 37 U.S.C. 439 were payable under the Act to members who performed active service during the lapse period. Unfortunately, the Act did not provide appropriations for payment of SCAADL to individuals who had been discharged and were, therefore, no longer on active service.

